

89-4250

Supreme Court, U.S.

FILED

SEP 11 1989

JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

JAMES CONSTANT

Petitioner,

v.

HITACHI AMERICA, LTD., TEXAS INSTRUMENTS,
INC., ANALOG DEVICES, INC., NEC ELECTRO-
NICS, INC., SPENSLEY HORN JUBAS & LUBITZ,
SHEPPARD MULLIN RICHTER & HAMPTON, HOP-
GOOD CALIMAFDE KALIL & BLAUSTEIN, and
ROBERT HILLMAN,

Respondents.

JAMES CONSTANT,

Petitioner,

v.

MARCIAN HOFF, ROBERT HILLMAN, INTEL, INC.,
TEXAS INSTRUMENTS, INC., BLAKELY, SOKOLOFF,
TAYLOR & ZAFMAN, and MAKER SMITH & MILLS,

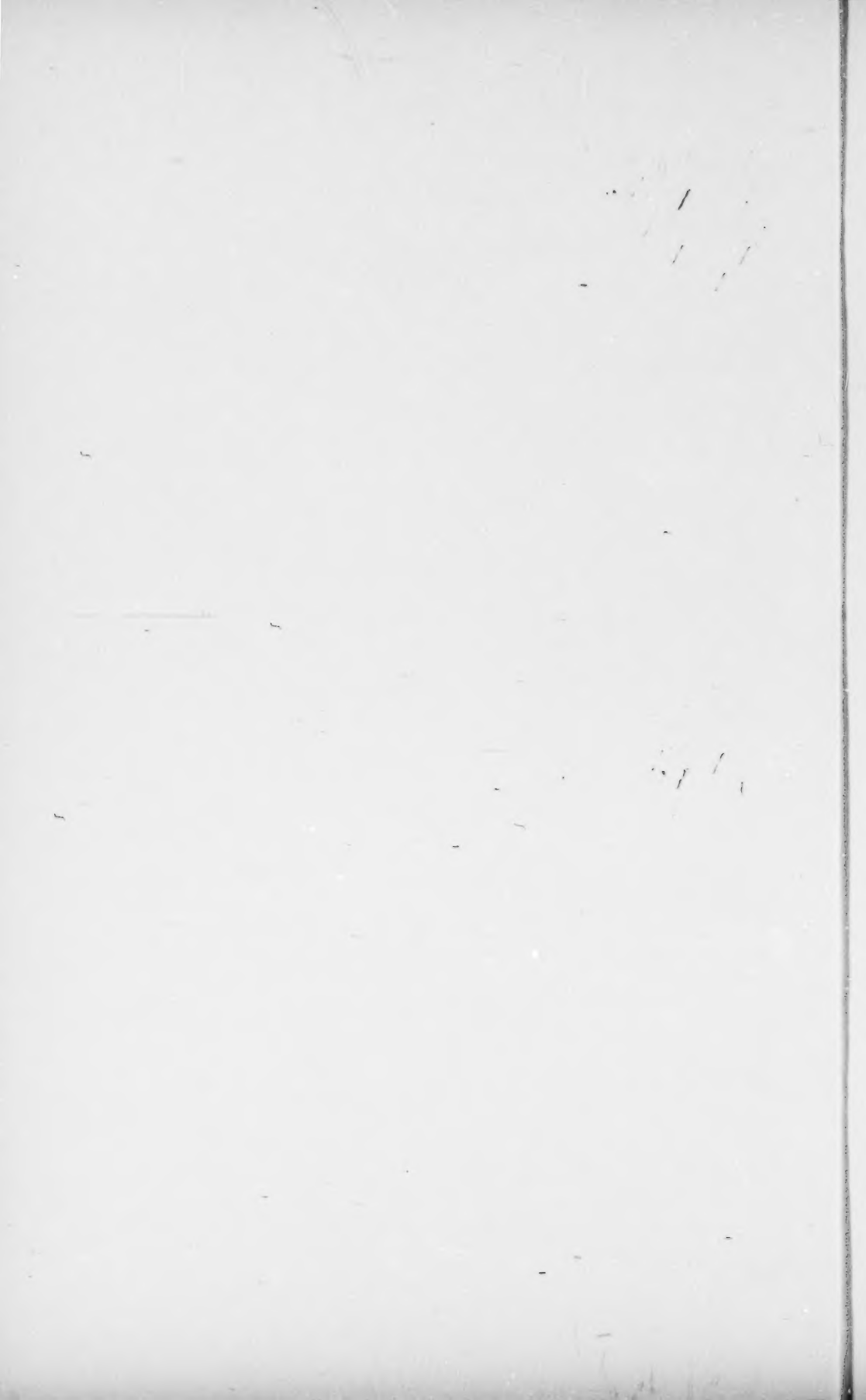
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

James Constant
1603 Danbury Drive
Claremont, CA 91711
(714) 624-1801

Pro se petitioner

52/92



QUESTIONS PRESENTED FOR REVIEW

Whether sanctions under FRCP 11 and FRAP 38 against petitioner are arbitrary because:

1. the fraud complaint and appeal were well grounded in facts (the special master admitted that he was unqualified in any technology and was not qualified to testify under oath; see EXHIBITS) and warranted by existing law (decisions of other federal courts of appeal);

2. the dismissal of the fraud cases against the master and the judge on grounds of absolute immunity is arbitrary in the clear absence of all jurisdiction (the district court cannot perform but can only review the Patent Office function);

3. the retention of jurisdiction by the district court to invalidate petitioner's patents in the earlier patent case, using prior art not considered by the

QUESTIONS CONCERNING THE
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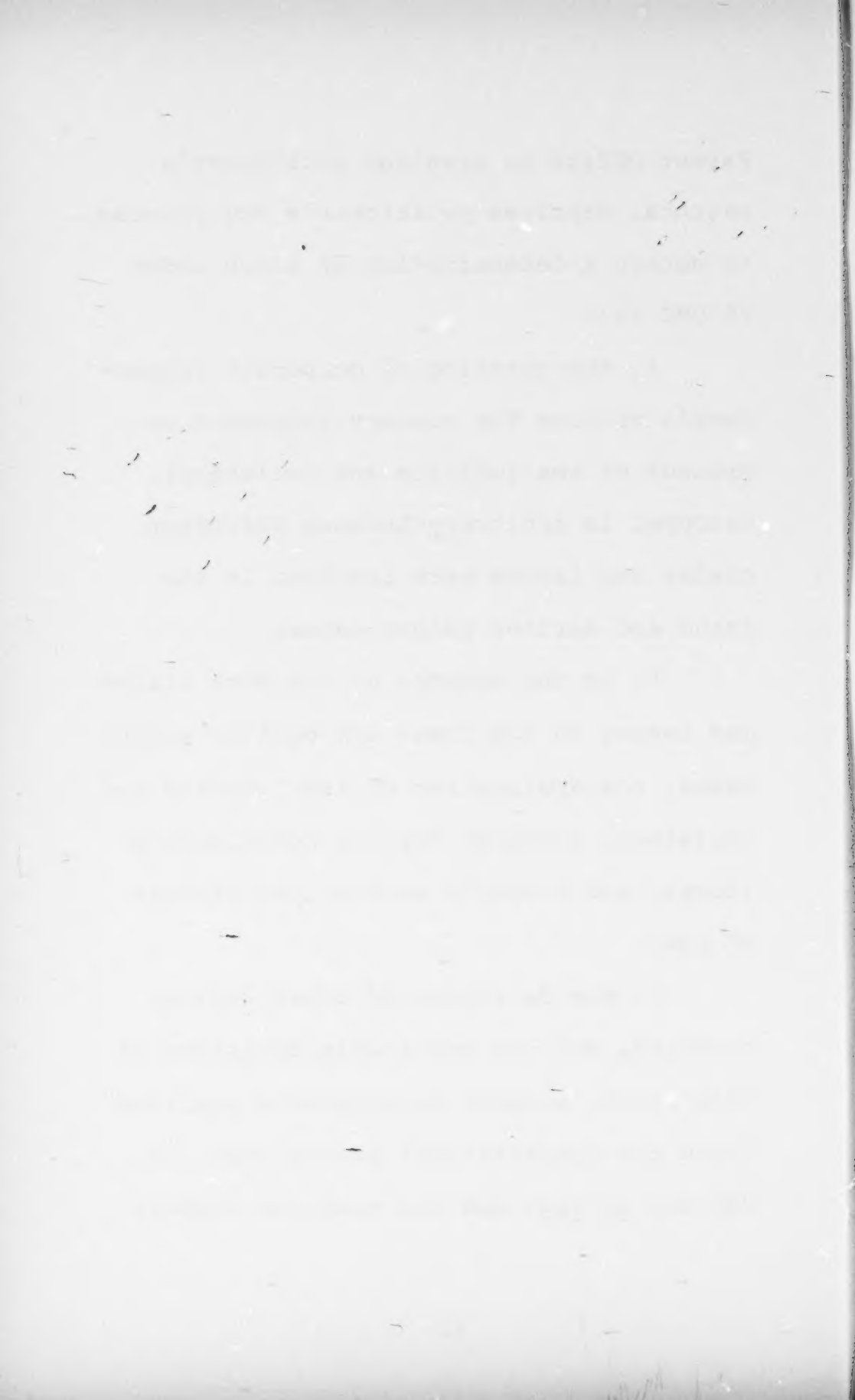
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Patent Office in granting petitioner's patents, deprives petitioner's due process to obtain a determination of issue under 35 USC 303;

4. the granting of corporate respondent's motions for summary judgement on grounds of res judicata and collateral estoppel is arbitrary because different claims and issues were involved in the fraud and earlier patent cases;

5. in the absence of the same claims and issues in the fraud and earlier patent cases, the application of res judicata and collateral estoppel deprive petitioner's liberty and property without due process of law;

6. the decisions of other federal circuits, and the applicable decisions of this Court, support petitioner's position (both the Congressional policy under 35 USC 302 et seq. and the case law support



petitioner's position, the courts below have failed to show any bad faith on the part of petitioner, sanctions actually assessed are grossly duplicative, unreasonable and do not take into account petitioner's ability to pay);

7. sanctions violate the due process clause because they were made without giving petitioner the opportunity to submit a response to respondent's applications for attorney's fees in the court of appeals; and

8. sanctions deny petitioner's equal protection because FRCP 11 and FRAP 38 treat pro se petitioner and corporate respondents differently.

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1. The first part of the report is a general introduction to the subject of the study.

2. The second part of the report is a detailed description of the methods used in the study.

3. The third part of the report is a discussion of the results of the study.

4. The fourth part of the report is a conclusion and a list of references.

5. The fifth part of the report is a list of appendices.

6. The sixth part of the report is a list of figures and tables.

7. The seventh part of the report is a list of footnotes.

8. The eighth part of the report is a list of abbreviations.

9. The ninth part of the report is a list of symbols.

10. The tenth part of the report is a list of definitions.

11. The eleventh part of the report is a list of acknowledgments.

12. The twelfth part of the report is a list of references.

13. The thirteenth part of the report is a list of appendices.

14. The fourteenth part of the report is a list of figures and tables.

15. The fifteenth part of the report is a list of footnotes.

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Other Authority

J. Romagnoli, "What Constitutes
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THE STATE OF NEW YORK

IN SENATE

January 1, 1901

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION

PASSED BY THE SENATE

APRIL 1, 1899

ALBANY:

WILLIAM W. BROWN, PRINTERS

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

The petitioner, James Constant,
respectfully prays that a writ of
certiorari issue to review the order for
sanctions against petitioner of the United
States Court of Appeals for the Federal
Circuit ordered 20 July, 1989 attached as
APPENDIX A-31.

OPINION BELOW

The Court of Appeals for the Federal
Circuit issued its decision attached as
APPENDIX A-2 affirming the order for
sanctions against petitioner of the District
Court of California attached as APPENDIX B.

JURISDICTION

The jurisdiction of this Court is
invoked under 28 USC 1254(1).

OFFICE OF THE
SECRETARY OF THE
NAVY
WASHINGTON, D. C.

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STATEMENT OF THE CASE

Judge Wilson, over petitioner's objections, appointed a patent lawyer as special expert to make recommendations on the validity of petitioner's two patents in the earlier patent case. Prior to his appointment, the special expert, Mr. Hillman, admitted having no technical qualifications in any technology and admitted that he was not qualified to testify as a technical expert. Mr. Hillman made two technical reports and testified twice under oath as a technical expert recommending that petitioner's two patents were invalid. Based on Hillman's technical reports and testimony, Judge Wilson found the two patents invalid (A-15). The court of appeals specifically affirmed that "Hillman was well qualified" (A-21).

Petitioner filed four lawsuits (the fraud cases) against the special

STATEMENT OF THE CASE

That the following facts are true:

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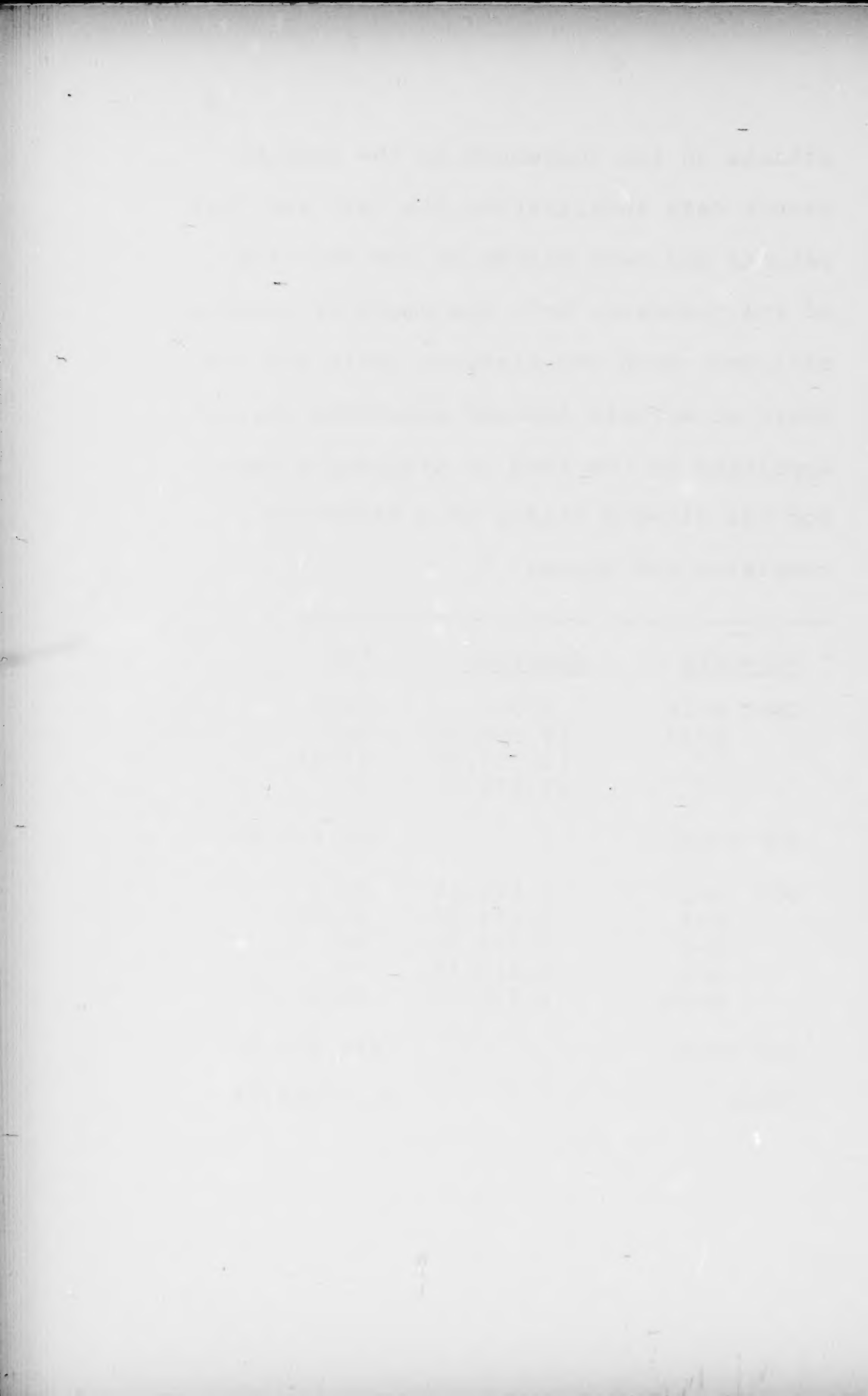
10. That the following facts are true: [The text is extremely faint and largely illegible, appearing to be a series of numbered points or paragraphs.]

master, the judge, some attorneys, and some defendants in the earlier patent case. The issues were fraud in the procurement of the judgement and a variety of tortious activities such as misrepresentation, injurious falsehood, and interference with property and contract rights. A-5,6. Mr. Hillman was named as a defendant in each case. The four cases arise from the fact that Mr. Hillman admitted that he was not qualified in any technology and that this fact was known to Judge Wilson and to the other parties before Hillman was appointed as special master in the patent case. The fraud cases were considered together. A-7.

The district court dismissed the cases against the master and the judge on grounds of absolute judicial immunity. The district court granted summary judgement in favor of the remaining defendants on grounds that the fraud cases were impermissible collateral

attacks on the judgement in the earlier patent case invalidating the '491 and '635 patents and were barred by the doctrine of res judicata. A-7. The court of appeals affirmed. Both the district court and the court of appeals imposed sanctions against appellant in the form of attorney's fees for his alleged filing of a frivolous complaint and appeal. *

* <u>Appendix</u>	<u>Sanction</u>	<u>For</u>
CAFC A-29	2,000	CAFC
A-33	18,303.35	HAL
"	12,707.50	Intel
"	25,626.08	TI
Sub-total		\$58,636.93
DCT B-2	9,694.10	TI
B-4	7,394.50	AD/NEC
B-6	7,298.75	HAL
B-8	16,016.16	TI
B-10	4,425	Intel
Sub-total		\$44,828.51
Total		\$103,465.36



REASONS FOR GRANTING THE WRIT

The issues are whether the complaint and appeal were frivolous and, if so, whether sanctions were fair.

1. Fraud

Petitioner's charge of "fraud" is based on his view that Mr. Hillman was unqualified to serve as a special master-expert, that Hillman knowingly testified as a qualified expert, that Judge Wilson and the other defendants in the patent litigation knew that Hillman was unqualified, that Judge Wilson allowed Hillman to write technical reports and to testify under oath as a technical expert, and that Judge Wilson used Hillman's technical reports and testimony to invalidate petitioner's patents. As evidence, petitioner introduced two letters by Hillman to defendant's counsel in the patent case and a letter from that counsel to

Judge Wilson before Hillman's appointment as master (Complaint Exhibits B,C,D; also in Petition for Rehearing in Banc) (hereinafter EXHIBITS).

Expertise for legal purposes means that a witness has sufficient specialized knowledge, skill, expertise, training or education to testify in the form of an opinion. Fed. Rules of Evid. 702. As shown in EXHIBITS, Hillman admits "I do not have expert qualifications in this or any other technology" and "I would not be qualified to testify as a technology expert". Yet Hillman did just that and Judge Wilson used Hillman's reports and testimony to invalidate petitioner's patents.

While the district court has wide discretion in determining when a purported expert is sufficiently qualified to take the stand and render an opinion in a

Judge Wilson before Wilmer's appointment

sent as master (Comptroler Exhibit E, C, D)

also in position for Rehearing in E, C, D

(Rehearing Exhibit E)

Exposition for legal purposes under

that a witness has sufficient qualifications

knowledge, skill, experience, training or

education to testify in the form of an

opinion, for, under of 1905, 101, 102, 103

shown in Exhibit, Wilmer's affidavit "I do

not have expert qualifications in this or

any other technology" and "I would not be

qualified to testify as a witness

expert. Yet Wilmer did just that and

Judge Wilson and Wilmer's report and

the court's decision.

Exhibit

While the doctrine under the rule

is applied as stated and when a witness

expert is sufficiently qualified to testify

the court and render an opinion in a

certain area, there are limits to that discretion; and a person lacking qualifications in the pertinent art, in patent cases, for testifying as to what would or would not have been known to one of ordinary skill in the pertinent art, should not be allowed to express an opinion. Forbro Design Corp. v. Raytheon Co., 190 USPQ 49 (CA 1 1976). A patent speaks to its art and what it says can be told in complicated cases only by one skilled in the art. Nyyssonen v. Bendix Corp., 342 F2d 531, 144 USPQ 555 (CA 1 1965) (citing B.F. Sturtevant Co. v. Massachussets Hair & Felt Co., 122 F2d 900, 51 USPQ 198, CA 1 1941, cert. den. 315 US 823, 52 USPQ 644, 1942).

Clearly, the court of appeal's finding that "Hillman was well qualified" (App. A-21) is not supported by the evidence in EXHIBITS. Equally clear, Hillman does

contain them, there are limits to this

distinction, and a person lacking qualifi-

cations in the particular art, in patent

cases, for example, as to what would

or would not have been known to one of the

person skilled in the particular art, would

not be allowed to express an opinion. Foreign

Design Cases, e. g., Raymond v. Green, 125 (1875)

12 (CA 1 1875). A patent applies to the

art and what is said can be said in

unlimited cases only by one skilled in

the art. Raymond v. Green, 125 (1875)

125 (1875). 125 (1875) (CA 1 1875)

125 (1875). 125 (1875) (CA 1 1875)

125 (1875). 125 (1875) (CA 1 1875)

125 (1875). 125 (1875) (CA 1 1875)

125 (1875)

Clearly, the art is the

thing that is the art

(App. 1-11) is not supported by the evidence

to EXHIBIT, especially clear, although

not qualify as a court appointed expert under Fed. Rules of Evid. 702, And, the court's finding is in clear conflict with the foregoing opinions in the 1st Circuit. As it stands, the court's decision would allow any patent lawyer who admits lacking qualifications in any technology to write technical reports and to testify on and defeat a United States patent.

From the foregoing, it is clear that the complaint and appeal were well grounded in their facts (EXHIBITS) and warranted by the existing law (1st Circuit and Supreme Court authorities cited above). The sanctions therefore, imposed by the courts below, have no grounds in either FRCP 11 or FRAP 38. Rather, the cases against the master and judge were dismissed on grounds of absolute judicial immunity and summary judgement was granted to corporate defendants on grounds of res judicata and collateral estoppel. These grounds are arbitrary and capricious.

not qualify as a court appointed expert
under Fed. Rules of Civ. 702, and the
court's finding is in direct conflict with
the foregoing opinions in the circuit.
As it stands, the court's decision would
allow the patent lawyer who drafted the
specification to say conclusively to the
technical expert and to himself or her
before a federal district court.

From the foregoing it is clear that
the complex and varied work performed
in patent cases, technical and legal, by
the practicing law firm, the client and the
court, requires close cooperation. The
court therefore, informed by the court
below, that it is in a better position
as to the law, the facts and the
evidence and facts were disclosed in opinion
of the court, which is hereby and jointly
indicated and agreed to by the court and
the court as to the facts and the
evidence, the court is hereby and jointly
indicated and agreed to by the court and
the court as to the facts and the
evidence.

2. Judicial Immunity

The doctrine of judicial immunity is meant to protect only judicial acts, which, by definition are acts requiring judicial discretion. When a judge does not exercise judicial discretion, the policies supporting absolute immunity disappear. While an administrative or executive act (here for the reexamination of patents based on references not considered by the Patent Office) requires a degree of discretion, it is not judicial discretion merely because the actor is a judge. Judicial immunity therefore should not be granted to such exercising of discretion. J. Romagnoli, "What Constitutes a Judicial Act for Purposes of Judicial Immunity?" 53 Ford. L.R. 1503 (hereinafter ROMAGNOLI), 1513 notes 74-79 and accompanying text.

The reexamination of petitioner's patents is not a function normally performed by judges only and not by administrators or executives. Id 1512. Indeed the main responsibility for such functions has been committed by Congress to the Patent Office. 35 USC 302 et seq. Moreover, while the district court has the power to review the act of granting petitioner's patents based on the record before the Patent Office, it only performs an administrative or executive act when it determines the validity of a patent based on references not considered by the Patent Office in granting petitioner's patents. The decision therefore to invalidate petitioner's patents, based on references not considered by the Patent Office, is an administrative or executive act not a judicial act. In the absence of a record in the

The responsibility of petitioner's

patents is not a question usually con-

sidered by judges, and not by adminis-

trators of the Patent Office. In 1872, indeed,

the main responsibility lay upon Congress

and was exercised by Congress in the

Patent Office. It was not until 1877

while the district courts had the power to

review the act of granting patents

patents issued in the United States, the

Patent Office, it only reviewed an appeal

from the district courts and when it reviewed

the validity of a patent issued or refused

not considered by the Patent Office.

Section 10 of the Patent Act, the validity

of a patent issued or refused

shall be determined by the district courts

and the Patent Office, in an appeal

from the district courts, the validity

of a patent issued or refused

shall be determined by the district courts

Patent Office, there is a clear absence of all jurisdiction to reexamine appellant's patents.

In affirming the district court's decision to invalidate petitioner's patents, the court of appeals ruled that

"There is no legal authority for the view that the court must first determine that the prior art in the evaluation of obviousness is more pertinent than the prior art considered by the PTO". Constant v. Advanced Micro-Devices, Inc., 7 USPQ2d 1057, 1065 (Fed. Cir. 1988).

However, this opinion contravenes the purpose for enactment by Congress of 35 USC 302 et seq. which provides in great detail the administrative procedure for the reexamination of patents.

Patent Office, there is a clear statement

of all jurisdiction to examine applications

for a patent.

In obtaining the historic record

devoted to historical publications

patents, the object is to establish that

there is no legal impediment

for the right to the patent

and that the patent is not

void for lack of jurisdiction

of jurisdiction in the patent

and the patent is not

void for lack of jurisdiction

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void for lack of jurisdiction

of jurisdiction in the patent

From the foregoing it is clear that the district court's act of reexamination of petitioner's patents, based on references not considered by the Patent Office, is an administrative or executive act which while involving a degree of discretion is definitely not a judicial act merely because the actor was the judge. Because the doctrine of judicial immunity is meant to protect only judicial acts, acts normally performed by judges only, judicial immunity disappears. The dismissal therefore of the complaint on grounds Hillman and Judge Wilson are protected by judicial immunity is without merit.

In Stump v Sparkman, 435 US 349 (1978) this Court held that a judge will remain absolutely immune from a damage suit if he acted within his jurisdiction, or even in "excess of his jurisdiction",

but not in the "clear absence of all jurisdiction" (Id 356-57 quoting Bradley v Fischer, 80 US (13 Wall) 335,351 (1872)) and the act he performed was a "judicial act" (Id 360). The Court developed a two-factor test for determining whether a judge's act is a "judicial" one (Id 362). The first factor -whether the act was a function normally performed by a judge - relates to the "nature of the act itself" (Id 362). The second factor - whether the parties dealt with the judge in his official capacity - looks to the "expectations of the parties" (Id 362). The first factor means a function normally performed by judges only and not by administrators or executives or legislators. See Justice White's statement in the majority opinion "Because Judge Stump performed the type of act normally performed only by judges and because he did so in his capacity as a Circuit

Court Judge, we find no merit to respondent's argument . . . that his action (was) nonjudicial and deprived him of his absolute immunity" (underlines added).

Id 362-63.

In applying the two-factor test Stump, supra to the earlier patent case, the function of the reexamination of issued patents is performed by the Patent Office under 35 USC 302 et seq. Moreover, while respondents opposed, petitioner recommended the low cost Patent Office procedure under 35 USC 302 et seq. to the district court. See transcript for hearing 5 May, 1986 p 9 line 9 through p 11 line 8 and p 13 lines 14-24. Exhibit B (Docket Number = DN 726 in patent case). A-3 to A-5. Clearly, the "expectations" of petitioner were not to deal with the judge in his official capacity but to have the reexamination of his patents

made by the Patent Office. Because Judge Wilson performed the type of act which Congress has assigned to the Patent Office under 35 USC 302 et seq. and because he did so in the clear absence of all jurisdiction, his action was non-judicial and deprived him of his absolute immunity". Id 362-363,

But even if the district court had jurisdiction to perform the Patent Office function under 35 USC 302 et seq., for the reexamination of petitioner's patents based on references not considered by the Patent Office (distinct from references considered by the Patent Office), the circumstances dictate that exhaustion of the administrative remedy should be required. See Dutcher v. Smith, 693 F2d 79,80 (CA9 1982): Adler v. US, 134 Ct Cl 200,202 (1956) (must exhaust even though exhaustion not mandatory). Exhaustion is required here because respondents may vindicate their rights at the administrative

level, thus making court intervention unnecessary. See McKart v. US, 395 US 185, 195 (1969); see also Ainsley v US, 8 Ct Cl 394,399-401 (1985). Exhaustion is also required because the costs of litigating patents are high (costs in the patent case of \$123,832 were taxed against petitioner including the master's fee of \$85,598 after 3 year litigation) compared to costs of obtaining a determination of issue under 35 USC 303 in the Patent Office (\$1,770 for each patent with a determination of issue in 3 months).

In the absence of a determination of issue under 35 USC 303, the retention of jurisdiction by the district court to invalidate petitioner's patents, using prior art not considered by the Patent Office, deprives petitioner's due process. The due process clause entitles petitioner to a

hearing on the merits so that he can prove that, in fact, the prior art used by the district court to invalidate petitioner's patents is not more pertinent than the prior art considered by the Patent Office in granting petitioner's patents. See Constant, supra citation at p 11. Forcing petitioner to give up his patents by irrebutably presuming that the prior art considered by the district court in its evaluation of petitioner's patents is more pertinent than the prior art considered by the Patent Office deprives petitioner's liberty and property without due process of law. Vlandis v. Kline, 412 US 441 (1973); Cleveland Board of Education v. LaFleur, 414 US 632 (1974); Coleman v. Darden, 595 F2d 533 (CA10 1979), cert den 100 S Ct 267, 444 US 927, 62 LEd2d 184 (Statutes creating permanent irrebutable presumptions are disfavored under the 5th and 14th Amendments, because they preclude

individualized determinations of fact upon which substantial rights or obligations may depend). Here, the court of appeals does not follow the policy enunciated by Congress in 35 USC 302 et seq. and affirms the district court's power to invalidate patents using prior art not considered by the Patent Office. Id., supra citation at p 11.

The dismissal therefore of the fraud cases against the master and judge on grounds of absolute immunity is arbitrary and capricious in the clear absence of all jurisdiction (the district court cannot perform but can only review the Patent Office function under 35 USC 302 et seq.). The retention of jurisdiction by the district court to invalidate petitioner's patents, using prior art not considered by the Patent Office, deprives petitioner's due process to obtain a determination of issue under 35 USC 303.

3. Res Judicata/Collateral Estoppel

Under the doctrine of res judicata (claim preclusion) the entry of a final judgement "on the merits" of a claim, (i.e., cause of action) in a proceeding serves to preclude the litigation of the same claim in a subsequent proceeding between the parties or their privies. See Lawlor v National Screen Service Corp. 349 US 322, 75 S Ct 865, 97 L Ed 1122 (1955); Chromalloy American Corp. v Kenneth Gordon Ltd., 736 F2d 694, 222 USPQ 187 (CAFC 1984); Flowers Industries, Inc. v Interstate Brands Corp., 5 USPQ2d 1580 (TTAB 1987). Inasmuch as the fraud claims and some parties (master, judge, attorneys) in fraud cases were different from the patent claims and parties in the earlier patent case, there can be no bar by reason of res judicata. Moreover, the

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defense of invalidity (35 USC 282) of the two patents is not a claim (i.e., cause of action) to bar the fraud cases under res judicata.

On the other hand, the doctrine of collateral estoppel (issue preclusion) serves to preclude the relitigation, by the same parties or their privies, of issues actually litigated, and necessarily determined by a court of competent jurisdiction, in a prior proceeding, whether or not the prior proceeding involved the same claim as the subsequent proceeding. Lawlor, Chromalloy, supra. See also Mother's Restaurant, Inc. v Mama's Pizza, Inc., 723 F2d 1566, 221 USPQ 394 (CAFC 1983); International Order of Job's Daughters v Lindeburg & Co., 727 F2d 1087, 220 USPQ 1017 (CAFC 1984). Because the fraud cases were not actually litigated, and



necessarily determined by a court of competent jurisdiction, and because some parties in fraud cases were different from the parties in the earlier patent case, there can be no bar by reason of collateral estoppel.

The fact is that there is nothing in the earlier patent case to support the district court and appeals court judgements that the petitioner's claims and issues of fraud, misrepresentation, injurious falsehood, and interference with property and contract rights were adjudicated "on the merits" or "actually litigated, and necessarily determined by a court of competent jurisdiction" in the earlier patent case.

The due process clause entitles petitioner to hearings on the merits so that he can prove that the master, judge,

and non-government respondents fraudulently obtained the judgement in the earlier patent case. The dismissal of the fraud cases against the master and the judge on grounds of absolute judicial immunity and the granting of summary judgement in favor of respondents on grounds of *res judicata* and collateral estoppel deny petitioner a hearing for the determination of fraud claims and issues on their merits and therefore deprive petitioner's liberty and property without due process. The irrebuttable presumptions of absolute judicial immunity, *res judicata*, and collateral estoppel violate the due process clause. Forcing petitioner to give up his patents by irrebutably presuming absolute judicial immunity, *res judicata*, and collateral estoppel in the present fraud cases

deprives petitioner's liberty and property without due process of law.

Vlandis, LaFleur, Coleman, supra.

The granting therefore of corporate appellee's motions for summary judgement on grounds of res judicata and collateral estoppel is arbitrary and capricious because different claims and issues were involved in the fraud and patent cases. Absent the same claims or issues in the two cases, the application of res judicata and collateral estoppel deprive petitioner's liberty and property without due process of law.

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4. Arbitrary Sanctions

Federal Circuit Rule 47.9 provides that "no application will be granted without an opportunity to submit a response". The order for sanctions of the CAFC (A-31) was made without giving petitioner the opportunity to submit a response to appellee's applications for attorney's fees.

Under FRAP 38, the CAFC may award costs and reasonable attorney's fees against a party, where both the Congressional policy and the case law are clearly contrary to the party's position. Monroe Auto Equipment Co. v. NLRB, 511 F2d 611 (CA5 1975), 89 BNA LRRM 2104, 76 CCH LC #10798, 20 FRServ2d 956. However, before assessing sanctions, a court must determine whether the situation is one of those highly unusual instances where the party is guilty of bad faith. West Virginia v. Chas. Pfizer & Co., 440 F2d 1079 (CA2 1971), cert

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den 404 US 871, 30 LEd2d 115, 92 S Ct 81 (disapproved on other grounds Illinois Brick Co. v. Illinois, 431 US 720, 52 LEd 2d 707, 97 S Ct 2061, reh den 434 US 881, 54 LEd2d 164, 98 S Ct 243); Fluoro Electric Co. v. Branford Associates, 489 F2d 320 (CA2 1972). There must be a clear showing of bad faith on the part of the party. West Virginia supra.

Sanctions are not warranted because the Congressional policy for the reexamination of patents under 35 USC 302 et seq. and the case law (see cited cases under "Fraud", "Judicial Immunity", "Res Judicata/Collateral Estoppel", supra) are clearly in favor of petitioner's position. Monroe Auto, supra.

But even assuming arguendo that sanctions are indicated, neither the district court or the court of appeals have shown bad faith on the part of petitioner.

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In the district court, petitioner filed his claim for fraud in the procurement of the judgement in the earlier patent case on the basis of the two letters by Hillman admitting "I do not have expert qualifications in this or any other technology" and "I would not be qualified to testify as a technology expert", that Hillman knowingly testified as a qualified expert, that Judge Wilson and respondents knew that Hillman was unqualified, that Judge Wilson allowed Hillman to write technical reports and to testify under oath as a technical expert, and that Judge Wilson used Hillman's technical reports and testimony to invalidate petitioner's patents, after petitioner recommended to

the Court (and respondents opposed) the Patent Office procedure under 35 USC 302 et seq. for the reexamination of petitioner's patents and in light of the allegations in the patent complaint that "he cannot afford the payment of substantial attorney's fees". par 146,154,156, prayer Parts X-1,X-2,X-3 2nd amended complaint in patent case (DN 170). These facts, coupled with the failure of the courts below to show bad faith on the part of petitioner preclude the assessment of sanctions. West Virginia, Illinois Brick, Fluoro Electric, supra.

Clearly, the complaint and appeal routes were the only ones available to petitioner to regain his patents which had been taken from him by a judgement procured in fraud. It was not a frivolous act for petitioner to pursue the only legal avenue available to him in order to regain his patent rights. The CAFC cannot

therefore say that petitioner acted in bad faith. In accord with West Virginia, supra, there can be no assessment of sanctions against petitioner without a determination by the CAFC that petitioner acted in bad faith. See also MGA Inc. v. General Motors Corp., 827 F2d 729, 3 USPQ2d 1762 (CAFC 1987) ("it was not frivolous for a patent holder to pursue legal avenues available to it to obtain decision with a delineated legal reasoning, and patent holder did not present an argument without foundation").

Moreover, under FRCP 11 and FRAP 38, fees must be reasonable. In the district court and on appeal, each non-government appellee submitted a separate brief and filed a separate application for briefs, even though the four fraud cases were considered together by the courts below, in violation of their duty to mitigate

expenses. No effort was made by appellees to make their identical arguments, filed separately, in a single brief, and the courts below did not consider the matter. Examination of the footnote at p 4 supra reveals the large variation of fees charged by each appellee for making the same argument, and the double fees for TI on appeal. Clearly, under the inefficient supervision of the courts below, FRCP 11 and FRAP 38 were used as an excuse to run up unjustified large numbers of hours. Gaiardo v. Ethyl, Corp., 835 F2d 479 (CA3 1987); Thomas v. Capital Security Services, Inc., 836 F2d 866 (CA5 1988) (en banc); INVST Financial Group Inc. v. Chem-Nuclear Systems, Inc., 815 F2d 391 (CA6 1987); Frantz v. U.S. Powerlifting Federation, 836 F2d 1063 (CA7 1987); Nassau-Suffolk Ice Cream Inc. v. Integrated Resources Inc., 114 FRD 684 (SNY 1987).

Under FRCP 11, a sanction should take into account equitable factors such as the sanctioned party's ability to pay. Brown v. Federation of State Medical Boards, 830 F2d 1429 (CA7 1987). In this country, the average citizen makes \$25,000 a year and, on average, saves 5% (\$1,250). Any costs and attorney's fees which exceed \$1,250 would be beyond the citizen's ability to pay and are therefore inequitable. Arbitrary sanctions which exceed the average citizen's ability to pay will destroy him economically and therefore go far beyond the intended purpose of the statute which provides the sanction. The situation is compounded when the sanction itself is groundless. *

* Petitioner has filed for bankruptcy

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The granting therefore of sanctions by the courts below is arbitrary and capricious because the Congressional policy (35 USC 302 et seq.) and the case law (2nd, 3rd, 5th, 7th Circuit authorities cited above) clearly support petitioner's position, because the courts below have failed to show any bad faith on the part of petitioner, and because sanctions actually assessed are unreasonable, duplicative and do not take into account petitioner's ability to pay.

5. Due Process and Equal Treatment

The due process clause entitles the petitioner to a hearing so that he can prove that, in fact, the judgement in the patent case was procured by fraud and that sanctions have no grounds under either FRCP 11 or FRAP 38. The irrebutable presumptions of absolute judicial immunity, res judicata and collateral estoppel, and sanctions based thereon, deprive peti-

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tioner's liberty and property without due process of law. Vlandis, Cleveland Board, Coleman, supra.

Due process under the 5th Amendment also includes protections against denials of equal protection. Bolling v. Sharpe, 347 US 497 (1954). FRAP 38 and FRCP 11 are unreasonable because they arbitrarily and capriciously allow appellee's attorney's fees against pro-se petitioner but do not allow pro-se petitioner's attorney's fees against appellees.

"Attorney Fees. You are not entitled to payment for your own services in pursuing your case pro se, because only an attorney may be awarded attorney's fees". Federal Circuit Informal Rule 17 p 77 Rules of Practice CAFC

But, even if FRAP 38 and FRCP 11 are reasonable rules, the First Amendment guarantees to petitioner the fundamental right to petition the Government for a

redress of grievances. The Government makes its courts available for the purpose of airing grievances. However, in the courts, attorney's fees are available to appellees who have enough money to hire attorneys. Attorney's fees are not available to petitioner who does not have enough money to hire attorneys. This is a clear denial of equal treatment.

The order for sanctions of the CAFC (A-29, A-33) was made without giving petitioner the opportunity to submit a response to appellee's applications for attorney's fees, without determinations by the CAFC whether the Congressional policy and the case law clearly favor sanctions, whether petitioner acted in bad faith, and whether appellee's fees were reasonable. The order for sanctions of the district court (B-1 et seq.) was made without that court's determination

of petitioner's ability to pay. * Sanctions therefore violate the due process clause. Because FRCP 38 and FRCP 11 treat appellees and petitioner differently, they deny equal protection.

6. Fiat Ruat Justicia

The case was decided by the district court on the government's motion to dismiss on grounds of absolute immunity and on the corporate defendant's motion for summary judgement on grounds of res judicata and collateral estoppel.

For purposes of ruling on the government's motion, the district court assumed that the master and judge were absolutely immune as a matter of law. This

* The issue was raised in petitioner's opposition to respondent's request for attorneys fees filed 1/8/88 at page 6 ("plaintiff cannot afford the attorneys fees . ."). See paragraphs 146, 154, 156 and Parts X-1, X-2, X-3 in complaint of earlier patent case in which petitioner alleges and prays for relief because "he cannot afford the payment of substantial attorneys fees".

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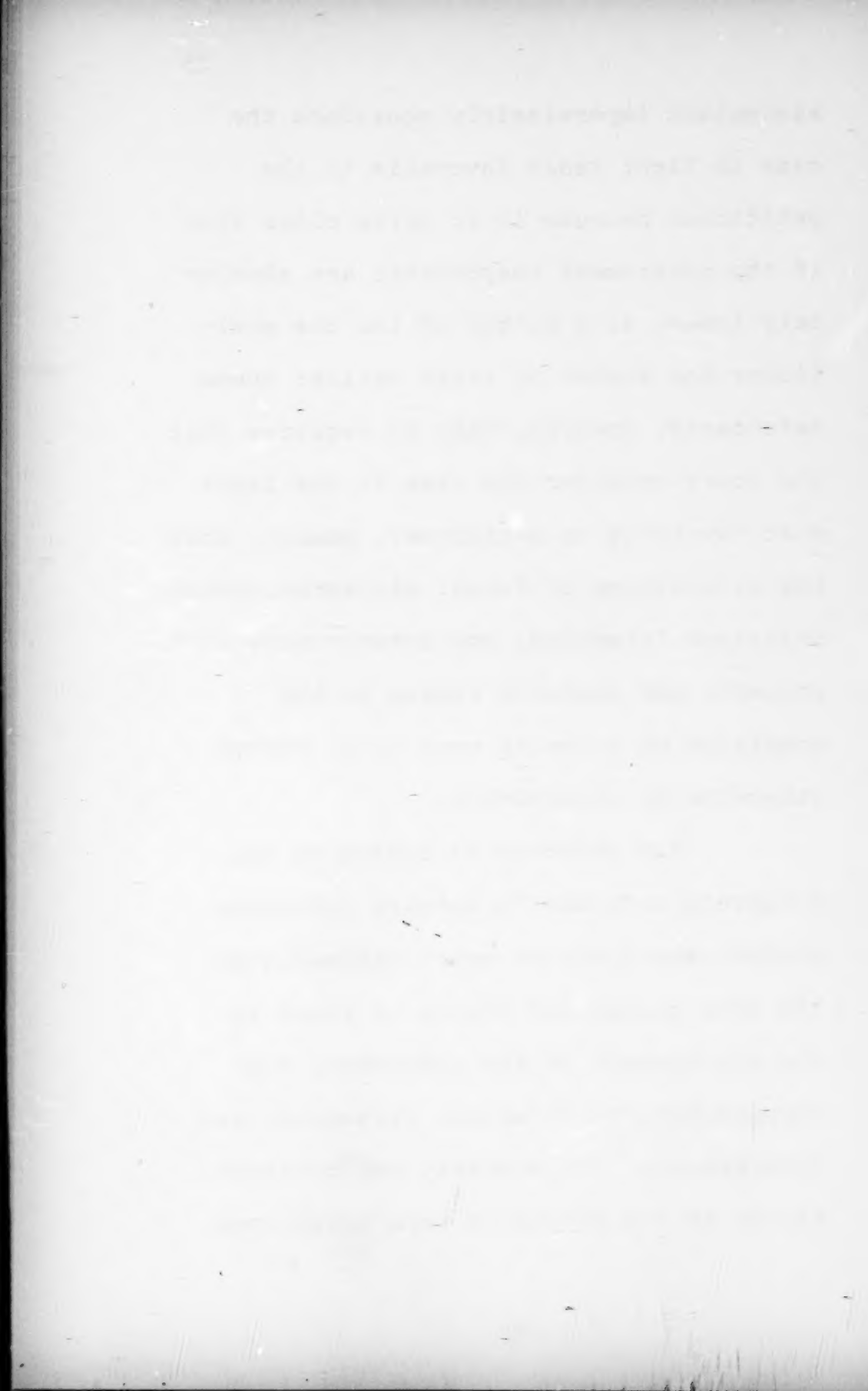
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assumption impermissibly considers the case in light least favorable to the petitioner because it is quite clear that if the government respondents are absolutely immune as a matter of law the petitioner has stated no claim against these defendants. However, FRCP 12 requires that the court consider the case in the light most favorable to petitioner, namely, that the allegations of fraud, misrepresentation, injurious falsehood, and interference with property and contract rights in the complaint be taken as true until proven otherwise by respondents.

For purposes of ruling on the corporate defendant's summary judgement motion, the district court assumed that the same claims and issues of fraud in the procurement of the judgement, misrepresentation, injurious falsehood, and interference with property and contract rights in the complaint were determined



in the earlier patent case. This assumption impermissibly determined the facts based on the declarations of corporate defendants attached to their motions. However, in any summary judgement determination, the court does not determine facts, it merely finds whether the parties dispute them. Here, respondents never answered the complaint.

Thus, the courts below made sanctions against petitioner not upon the allegations of the complaint signed by petitioner but on the assumptions that the allegations in the complaint are not true and that there is no dispute to try. The complaint was thrown out the window. From this perspective, a judgement is a judgement is a judgement by fiat, no matter what the respondents did or did not do to get it, no matter how the federal rules are used to get it, no

matter that absolute judicial immunity is not always absolute, and no matter that there are genuine issues of material fact to be tried.

Indeed, the orders for sanctions (A-29,A-33,B-1 et seq.) say, first, that they are authorized without giving petitioner his day in court, second, that they are authorized even when they infringe petitioner's constitutional rights and, third, that the less you are worth, the more you're going to be sanctioned.

First, the sanctions awards were entered after petitioner's complaint was dismissed on grounds of absolute immunity and after summary judgement was granted on grounds of res judicata and collateral estoppel. Sanctions were based not upon the facts and law in the complaint signed by petitioner but upon the court's second guessing what facts and law the petitioner

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should have considered in making his complaint. Thus, respondent's victory is diminished by at least two significant factors: on the merits (which were never tried; respondents do not recover money on the merits), and the award is based on the court's second guessing (of what petitioner should or should not have done under FRCP 11 and FRAP 38; respondents recover money on basis of papers signed by respondents not on the basis of any paper signed by petitioner). Clearly, sanctions are designed to give the courts below powers to second guess what petitioner should have considered in making his complaint, rather than being (as they should be) the product of a full and fair adjudication that hands the respondents a victory on the merits.

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Second, sanctions violate petitioner's First Amendment right to petition the government (when fraud in the administration of justice is involved), and sanctions violate petitioner's Fifth amendment rights (to earn a living as an inventor; to prevent the seizure of his patents through fraud in the procurement of judgements; to obtain a determination of issue under 35 USC 303; to prove the alleged fraud in the procurement of the judgement on merits; to have a chance to submit a response to respondent's applications for sanctions; and for equal protection under FRCP 11 and FRAP 38).

Third, the total sanctions against petitioner (\$103,465) amount to 4 years of an average citizen's earnings (\$25,000/yr) or 83 years of his average savings (\$1,250/yr). Petitioner is unaware of any sanctions against a corporation which amounts to 4

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years of the corporation's gross sales or 83 years of the corporation's profits. Thus, assuming that FRCP 11 and FRAP 38 are reasonable rules (they are not) and that sanctions are warranted (they are not), FRCP 11 and FRAP 38 treat petitioner and respondents differently, based on a party's worth, and therefore deny petitioner's equal protection.

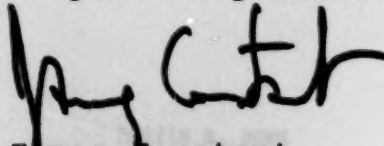
The district and appeals court judges make their own rules, by fiat, *ruat justicia*.

CONCLUSION

The petition should be granted because the court of appeals decision is in conflict with the decisions of other courts of appeals, and with the applicable decisions of this Court, on the same matter and because the court of appeals has so far sanctioned a departure from the usual proceedings as to call for an exercise of this Court's power of supervision.

For the foregoing reasons, petitioner James Constant respectfully requests that a writ of certiorari issue to review the order for sanctions of the United States Court of Appeals for the Federal Circuit attached as APPENDIX A-31.

Respectfully submitted



James Constant
1603 Danbury Dr
Claremont, CA 91711
(714) 624-1801

pro se petitioner

For the foregoing reasons, petitioner

seeks to have the Court set aside the
order of the Court of Appeals for the Fifth Circuit
dated 12/15/54, and to have the Court
grant her writ of habeas corpus.

Very respectfully,
Sincerely,
J. Edgar Hoover

1201 G Street, N.W.
Washington, D.C. 20004
(202) 452-2000

cc: Mr. Tolson

CERTIFICATE OF SERVICE

I certify that the foregoing
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT and APPENDIX were
served on all parties by mailing first
class three (3) true copies to each of
them on 11 September, 1989 addressed
as follows:

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333 SOUTH HOPE STREET, 48TH FLOOR
LOS ANGELES, CA 90071

TESTIMONY OF WITNESS

I testify that the following

testimony was given by the witness on the

United States Court of Appeals for the

Federal Circuit and District Court

located on 111 Madison Street, St. Paul, Minn.

Class of 1911, the witness on each of

them on 11 September, 1911, as follows:

As follows:

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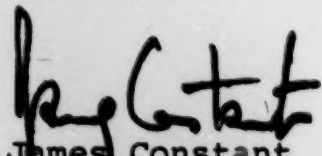
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Barbara Herwig/R. Rasmussen
Dept of Justice, Civil Division
Appellate Staff
10th & Penn Ave., NW Rm 3631
Washington, D.C. 20530

Solicitor General
Department of Justice
Washington, D.C. 20530

I declare under penalty of
perjury that the foregoing is true
and correct.

Executed on 11 September,
1989 at Claremont, California.


James Constant
1603 Danbury Dr
Claremont, CA 91711
(714) 624-1801

pro se petitioner

No. 89-425

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Supreme Court, U.S.
FILED

OCT 14 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

JAMES CONSTANT

Petitioner,

v.

HITACHI AMERICA, LTD., TEXAS INSTRUMENTS,
INC., ANALOG DEVICES, INC., NEC ELECTRO-
NICS, INC., SPENSLEY HORN JUBAS & LUBITZ,
SHEPPARD MULLIN RICHTER & HAMPTON, HOP-
GOOD CALIMAFDE KALIL & BLAUSTEIN, and
ROBERT HILLMAN,

Respondents.

JAMES CONSTANT,

Petitioner,

v.

MARCIAN HOFF, ROBERT HILLMAN, INTEL, INC.,
TEXAS INSTRUMENTS, INC., BLAKELY, SOKOLOFF,
TAYLOR & ZAFMAN, and MAKER SMITH & MILLS,

Respondents.

SUPPLEMENT TO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

James Constant
1603 Danbury Drive
Claremont, CA 91711
(714) 624-1801

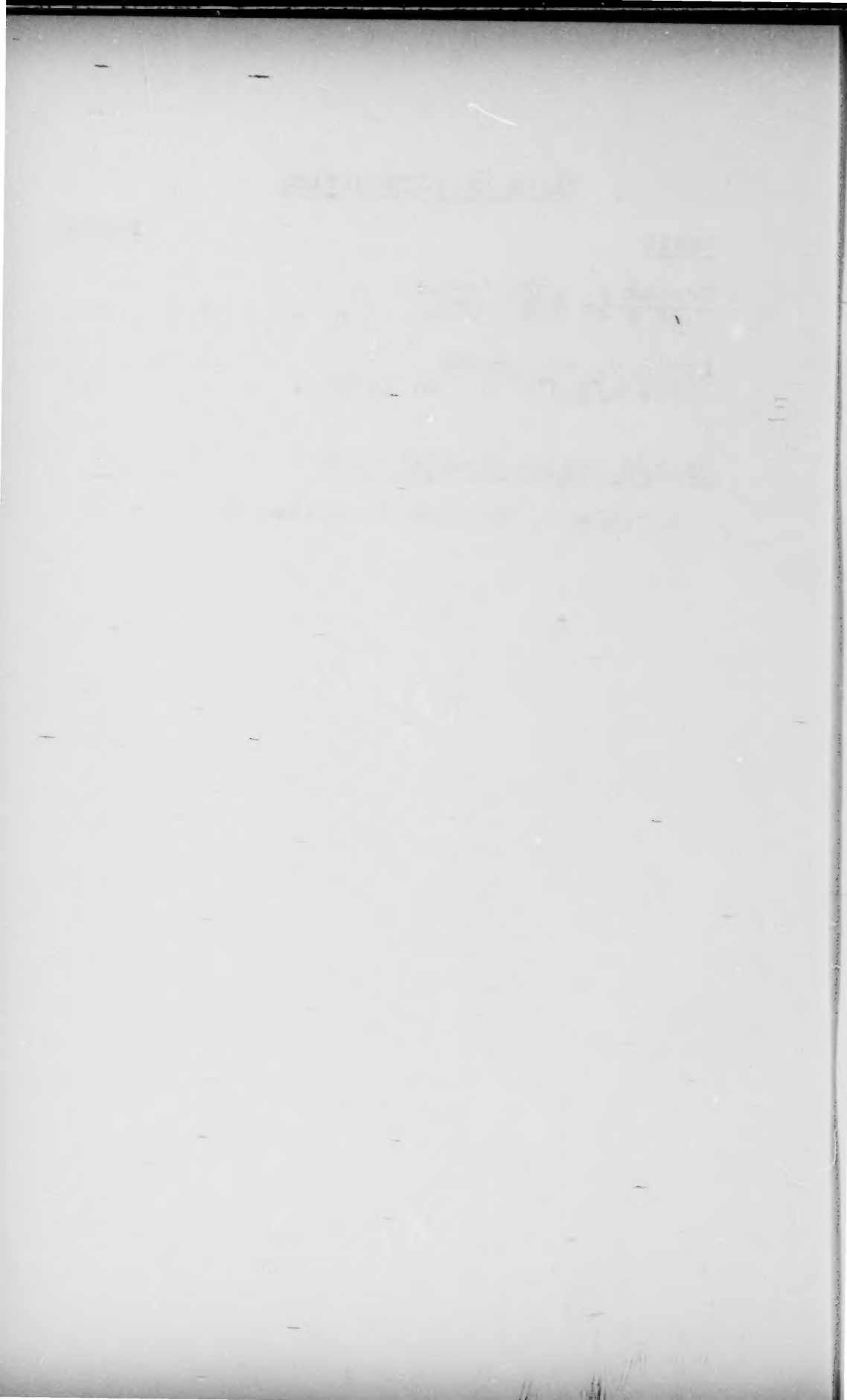
Pro se petitioner

10 pp



TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<u>Graham v. John Deere</u> 86 S Ct 684 (1966)	4
<u>Klein v. Whitehead</u> 389 A2d 374 (CA Md 1978)	2,3
<u>United States Constitution</u> .	
Article 1, Section 8, Clause 8 .	4



SUPPLEMENT TO
PETITION FOR WRIT OF CERTIORARI

The district court granted summary judgement in favor of corporate defendants on grounds that the fraud cases were impermissible collateral attacks on the judgement in the earlier patent case invalidating the '491 and '635 patents and were barred by the doctrine of res judicata. A-22,23,24.

The doctrines of res judicata, collateral estoppel, and collateral attack are different; they apply in different circumstances and they prevent different things. This supplement treats the differences between the three doctrines and concludes that the present action is not subject to any of these doctrines.

Estoppel by judgement (direct or collateral) comes into play when a person seeks not to attack the existence or validity of a judgement or decree, but rather

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CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME

BY NATHANIEL BENTLEY

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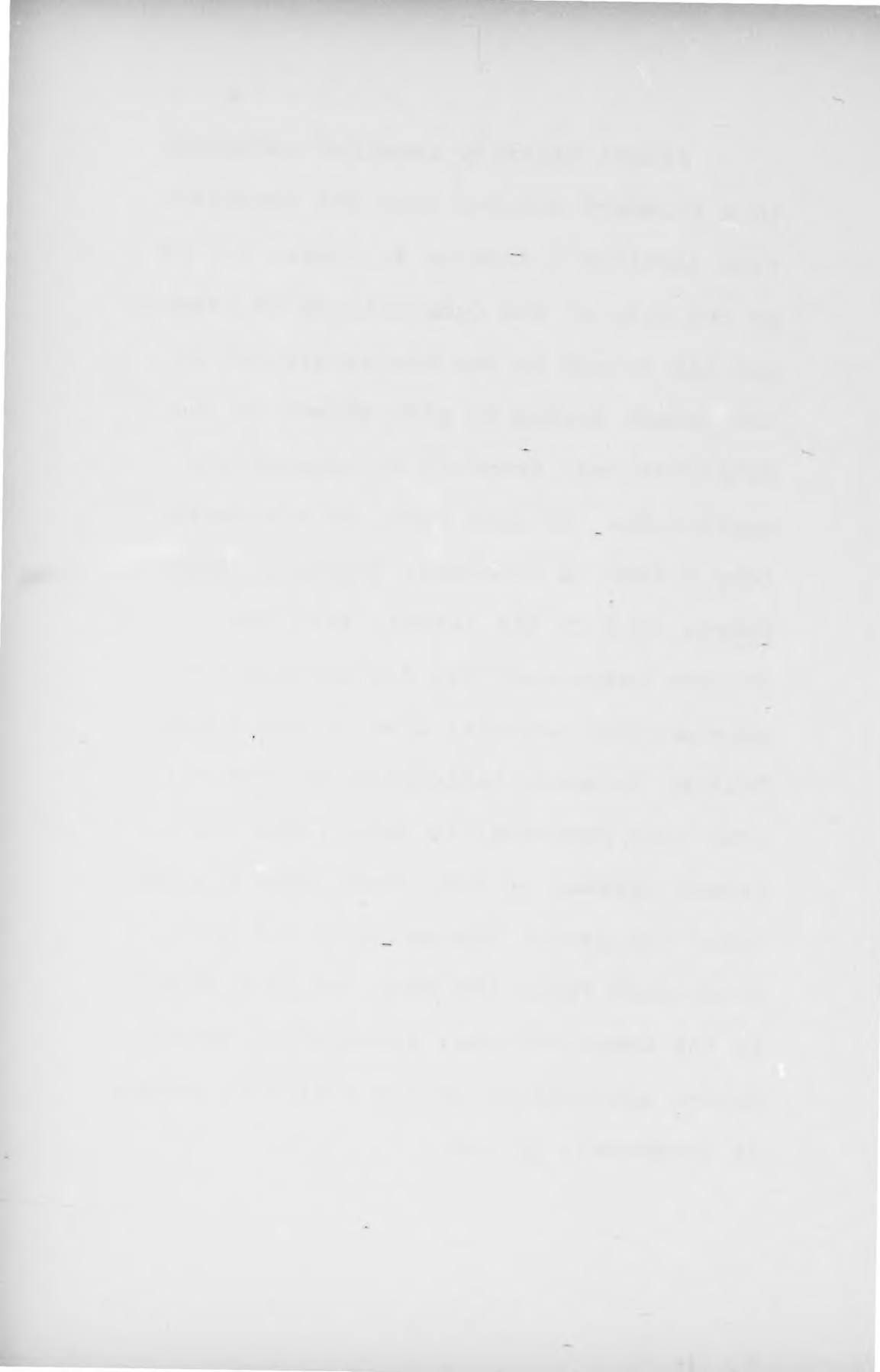
to question the effect of that judgement or decree upon him. Conceding that the judgement exists and is valid, he asserts that it does not apply to or settle the issues sought to be litigated in the subsequent proceeding. If the person was a party to the earlier proceeding, he is bound by the existing judgement and by the adjudications upon which it is based.

Klein v. Whitehead, 389 A2d 374 (CA Md 1978) 386-387. In the present case, the lower courts reached the wrong result because petitioner seeks to attack the validity of the earlier judgement (A-22) for which the doctrines of estoppel by judgement (direct or collateral) do not apply. Thus, to the extent the decisions below rely on the doctrines of res judicata or collateral estoppel they are in error.

The doctrine of "collateral attack", on the other hand, prevents a person from challenging the validity of the existing judgement itself rather than merely its scope or effect. Id 384,386-387. However, there is an exception to the rule depending whether the person seeking to attack the existing judgement was a party or a stranger to the proceeding from which it arose. Id 387. In the present case, petitioner introduced two letters by Hillman to defendant's counsel in the earlier patent case and a letter from that counsel to Judge Wilson before Hillman's appointment (Exhibits B,C,D in complaint) as evidence from which the court could have concluded that the actions of respondents in prosecuting the patent case amounted to a fraud upon the petitioner and upon the Government.

The history of the "American" nation
is a story of the growth of a nation from
a small colony to a great power. It is a story
of the struggle for freedom and independence,
of the fight for the rights of the oppressed,
and of the development of a new society.
It is a story of the triumph of the human
spirit over the forces of darkness and
evil. It is a story of the power of
love and of the strength of unity.
It is a story of the hope of a better
world and of the dream of a more
just society. It is a story of the
faith in the future and of the belief
in the possibility of a brighter tomorrow.
It is a story of the courage of the
pioneers and of the sacrifice of the
heroes. It is a story of the wisdom of
the statesmen and of the vision of the
leaders. It is a story of the love of
the people and of the devotion of the
servants. It is a story of the power
of the truth and of the strength of the
right. It is a story of the hope of
the future and of the dream of a
better world.

Patent validity requires reference to a standard written into the Constitution (Article 1 Section 8, Clause 8). It is the duty of the Commissioner of Patents and the courts in the administration of the patent system to give effect to the Constitutional standard by appropriate application, in each case, of the statutory scheme of Congress. Graham v. John Deere, 86 S Ct 684 (1966), 688. The primary responsibility for sifting out unpatentable material lies in the Patent Office. To await litigation is, for all practical purposes, to debilitate the patent system. Id 694. Thus, when a patent fails the patent system fails and the Government fails its duty "to give effect to the Constitutional standard by appropriate application of the statutory scheme of Congress". Id 688.



From the foregoing it is clear that the judgement sought to be impeached in the earlier patent case is a fraud upon the interests of the Government which brings the present case within the exception of the doctrine of collateral attack. *

Because petitioner attacks the validity of the judgement in the earlier patent case, the doctrine of estoppel by judgement (direct or collateral) does not apply and the courts below entering judgements for respondents was in error. Because the fraud is upon the interests of the Government, the doctrine of collateral attack is inapplicable. The sanctions therefore against petitioner,

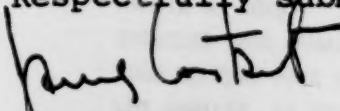
* Whether or not the Government seeks to attack the judgement in the earlier patent case is not material to the question of sanctions where the sole issue is whether petitioner's complaint and appeal were frivolous

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on grounds the complaint and appeal were frivolous, are without foundation.

For the reasons herein and in the original petition, petitioner James Constant respectfully requests that a writ of certiorari issue to review the order for sanctions of the United States Court of Appeals for the Federal Circuit in APPENDIX A-31.

Respectfully submitted



10/9/89

James Constant
1603 Danbury Dr
Claremont, CA 91711
(714) 624-1801

pro se petitioner

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CERTIFICATE OF SERVICE

I certify that the foregoing
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT and APPENDIX were
served on all parties by mailing first
class three (3) true copies to each of
them on 9 October, 1989 addressed
as follows:

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LOS ANGELES, CA 90012

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SHEPPARD, MALLIN, RICHTER & HAMPTON
333 SOUTH HOPE STREET, 40TH FLOOR
LOS ANGELES, CA 90071

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CHAPTER I

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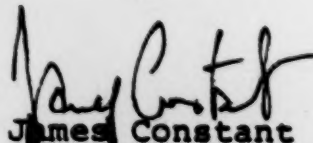
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Dept of Justice, Civil Division
Appellate Staff
10th & Penn Ave., NW Rm 3631
Washington, D.C. 20530

Solicitor General
Department of Justice
Washington, D.C. 20530

I declare under penalty of
perjury that the foregoing is true
and correct.

Executed on 9 October,
1989 at Claremont, California.



James Constant
1603 Danbury Dr
Claremont, CA 91711
(714) 624-1801

pro se petitioner

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

Supreme Court, U.S.

FILED

SEP 11 1989

SH F. SPANIOL, JR.
CLERK

JAMES CONSTANT

Petitioner,

v.

HITACHI AMERICA, LTD., TEXAS INSTRUMENTS,
INC., ANALOG DEVICES, INC., NEC ELECTRO-
NICS, INC., SPENSLEY HORN JUBAS & LUBITZ,
SHEPPARD MULLIN RICHTER & HAMPTON, HOP-
GOOD CALIMAFDE KALIL & BLAUSTEIN, and
ROBERT HILLMAN,

Respondents.

JAMES CONSTANT,

Petitioner,

v.

MARCIAN HOFF, ROBERT HILLMAN, INTEL, INC.,
TEXAS INSTRUMENTS, INC., BLAKELY, SOKOLOFF,
TAYLOR & ZAFMAN, and MAKER SMITH & MILLS,

Respondents.

A P P E N D I X

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

James Constant
1603 Danbury Drive
Claremont, CA 91711
(714) 624-1801

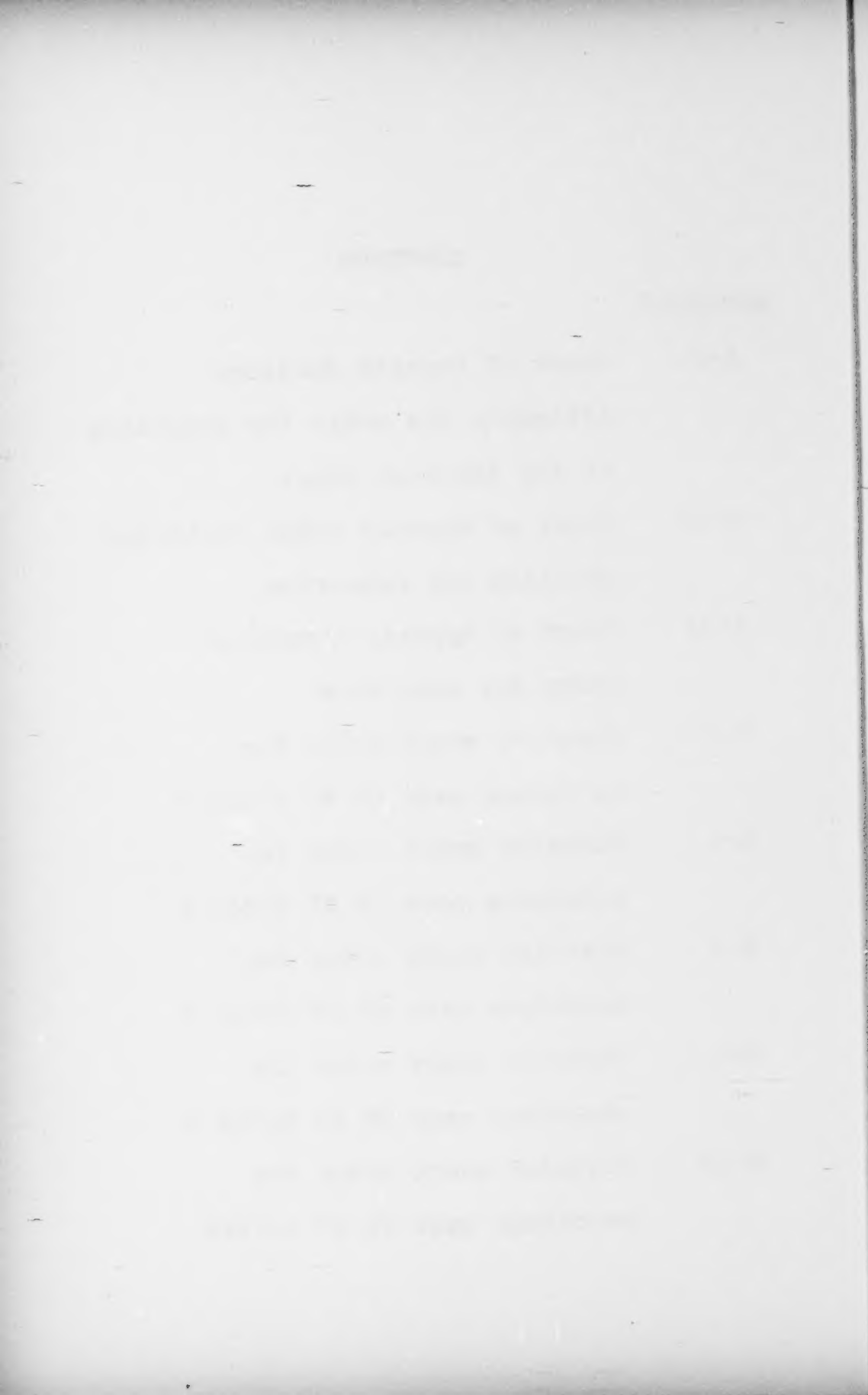
Pro se petitioner



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sanctions case CV 87 07046 R
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sanctions case CV 87 07046 R
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sanctions case CV 87 06766R



APPENDIX A



UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-1195

JAMES CONSTANT,

Plaintiff-Appellant

v.

STEPHEN WILSON and ROBERT HILLMAN,

Defendants-Appellees

DECIDED: August 25, 1988

Before SMITH, NIES, and NEWMAN,

Circuit Judges.

SMITH, Circuit Judge.

DECISION

Appellant James Constant filed four lawsuits (the fraud cases) against most of the participants in a previous lawsuit (the patent case), alleging fraud in the procurement of the judgement in the patent case. The United States District Court for the

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Central District of California dismissed the fraud cases against the judge and special master, and granted summary judgment in favor of all remaining defendants on all issues. The court also imposed sanctions under FRCP 11. We affirm the decision of the district court. We also impose sanctions under FRAP 38 because we find this appeal to be frivolous.

OPINION

I. The Earlier Patent Case

The four cases on appeal are the outgrowth of previous litigation. In the earlier patent case, Constant, in 1985, sued 14 high technology companies for infringements of his United States patents Nos. 3,950,635 (the '635 patent) and 4,438,491 (the '491 patent). The complaint also contained several other theories of recovery and challenged the constitutionality of 35 USC 282. Constant conducted

his case pro se, as he has in the litigation now on appeal. The district court dismissed all counts except the infringement claims. The defendants filed counterclaims asking to have the patents declared invalid. Judge Wilson,^{1/} with the agreement of all parties, appointed a special master, Robert E. Hillman, to make recommendations to the court concerning motions for summary judgement on issues of patent invalidity. After the special master issued recommendations, concluding that the patents were invalid, the court independently determined that there were no material issues of contested facts and entered summary judgement declaring all claims of both patents to be

^{1/} The case was brought in the United States District Court for the Central District of California, and was initially heard before the Honorable Pamela A. Rymer. The case was transferred to the Honorable Steven V. Wilson on December 16, 1985. Although the cases here represent a collateral attack on the rulings by both Judges, only Judge Wilson was named as a defendant.



invalid under 35 USC 102(b) and 103.

Constant appealed to this court. We contested not only the judgements of invalidity, but also the dismissal of his constitutional claims, the legality of a summary judgement, the role and conduct of the special master, and several procedural rulings of the district court. This court has now ruled against him on all issues. Constant v. Advanced Micro-Devices, Inc., 7 USPQ2d 1057 (Fed. Cir. 1988) (Constant I).

II. The Fraud Cases

In October and November 1987, while the appeal of the patent case was pending before this court, Constant filed four overlapping lawsuits against various parties in the patent litigation alleging fraud in the procurement of the judgement in that case, and a variety of tortious activities such as misrepresentation, injurious false-



hood, and interference with property and contract rights. In Constant v. Hillman (CV-87-06592-R), the defendant was Robert E. Hillman, a patent attorney who served as a special master in the patent case, In Constant v. Wilson (CV-87-07315-R), Constant sued Hillman and the Honorable Steven V. Wilson, the judge who presided over the later phases of the patent case. In Constant v. Hoff (CV-87-06766-R), the defendants were Hillman, two of the defendants in the patent case (Intel, Inc., and Texas Instruments, Inc.), the law firms that represented them in the patent case, and Marcian Hoff, an expert witness for Intel, whose deposition was relied upon by the court when it invalidated the '491 patent. In Constant v. Hitachi (CV-87-07046-R), the defendants were again Hillman and the defendants in the patent case (Intel, Texas Instruments, Hitachi of America, Ltd.,



Analog Devices, Inc., and NEC Electronics, Inc.), together with their lawyers.

The district court (Real, C.J.) dismissed the cases against Hillman and Judge Wilson on grounds of judicial immunity. The court granted summary judgement in favor of the remaining defendants on all issues, and also imposed sanctions against Constant in the form of attorney fees under FRCP 11.

The four cases on appeal arise from a single set of factual circumstances and overlap in the parties, theories of recovery, grounds for the dismissals, and basis for the sanctions. In view of the duplicative nature of the cases, in this opinion they will all be considered together.

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III. Jurisdiction

A threshold question is whether this court has jurisdiction to hear these appeals. The Government, representing Hillman and Judge Wilson, argues that this court lacks jurisdiction. The only arguable source of jurisdiction for this court to consider this appeal is 28 USC 1295(a)(1) which empowers this court to entertain appeals of final decisions of a district court where the lower court's jurisdiction "was based, in whole or in part, on section 1338 of (title 28)". Section 1338 grants federal district courts original jurisdiction over "any civil action arising under any Act of Congress relating to patents". The Government points out that Constant's complaint does not explicitly allege jurisdiction



based on any statute relating to patents.^{2/}
The Government urges that this court dismiss the appeals for lack of jurisdiction, and then decline to transfer the cases under 28 USC 1631 since it would not be in the "interest of justice". See Galloway Farms, Inc. v. United States, 834 F2d 998, 1001 (Fed. Cir. 1987). The practical effect of such a dismissal would be that appellant

2/ The complaint alleged jurisdiction pursuant to 28 USC 1331 (federal question jurisdiction arising from constitutional claims), 28 USC 1332 (diversity), 28 USC 1343 (civil rights claims), and "pendent jurisdiction" arising from the previous case. The Government strenuously objects to the propriety of pendent jurisdiction in this case. The complaint does allege jurisdiction under 35 USC 154 (patent holder has the right to exclude others from making, using, and selling), and 35 USC 261 (a patent shall have the attributes of personal property), but these sections of the statute are relevant to jurisdiction, if at all, only in the context of Constant's constitutional theories which we have found to be erroneous.

would not be able to appeal to the Ninth Circuit because the time for filing an appeal has elapsed and, therefore, all decisions of the district court would stand as final.

This court has inherent jurisdiction to determine its own jurisdiction. C.R. Bard, Inc. v. Schwartz, 716 F2d 874, 219 USPQ 197, 200 (Fed. Cir. 1983). Substance, not form, controls our evaluation of pleadings to determine jurisdiction. "Implicit in our mandate is the authority to recharacterize pleadings which would improperly evade the intent of Congress". Chemical Engineering Corp. v. Marlo, Inc., 754 F2d 331, 333, 222 USPQ 738, 740 (Fed. Cir. 1984); see also Williams v. Secretary of Navy, 787 F2d 552, 558 (Fed. Cir.



1986). ^{3/} Close analysis of the pleadings is especially appropriate in cases such as this where the pleadings were drafted by a pro se appellant who is not an attorney. See Haines v. Kerner, 404 US 519, 520 (1972).

Jurisdiction in the district court arises in part under the patent laws, and thus provides jurisdiction for an appeal to this court under 28 USC 1295(a)(1), in:

cases in which a well pleaded complaint establishes either that federal patent law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal patent law, in that patent law is a necessary element of one of the well pleaded claims.

Christianson v. Colt Industries Operating Corp.,
56 USLW 4625, 4627 (US June 17, 1988). The well

3/ There is no evidence here that Constant intentionally drafted his pleadings to evade the jurisdiction of the Federal Circuit. Indeed, he has brought his appeals to this court.



pleaded complaint rule provides that jurisdiction arises from the plaintiff's cause of action, and not from plaintiff's defenses to counterclaims or plaintiff's answers to the defendant's affirmative defenses. Louisville & N. R.R. v. Mottley, 211 US 149 (1908).

Although Constant's complaints do not explicitly request relief provided by the patent laws, when his complaints are construed under the liberal pleadings standard of Haines v. Kerner, we find that this court has jurisdiction over these appeals under two alternative theories: (1) these cases must be treated as, in effect, motions or proceedings that are properly part of a previous case, Constant I, over which this court has jurisdiction or (2) penetrating behind the wording of the complaints to the substance, "patent law is a necessary



element of one of the well-pleaded claims".
Christianson, 56 U.S.L.W at 4627.

First, this court has subject matter jurisdiction under 28 USC 1295(a) over entire cases, including dependant nonpatent issues. Atari, Inc. v. FS&A Group, Inc., 747 F2d 1422, 1429, 223 USPQ 1074, 1080-81 (Fed. Cir. 1984); Panduit Corp. v. All States Plastic Manufacturing Co., 744 F2d 1564, 1573, 223 USPQ 465, 470 (Fed. Cir. 1984). Our jurisdiction extends not only to the final decisions of the district court in the main case under 28 USC 1291 but also to certain other final orders such as interlocutory decisions made appealable under 28 USC 1292. A ruling of a district court under FRCP 60(b) is final and appealable. Ashland Oil, Inc. v. Delta Oil Products Corp., 806 F2d 1031, 1032, 1 USPQ2d 1073, 1074 (Fed. Cir. 1984). These cases presently on

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appeal properly are construed, in their substance, as motions to-reopen the judgments in the patent suit, Constant I, on grounds of fraud under Rule 60(b)(3). The decisions of the trial court are, in effect, denial of these motions over which we have jurisdiction.

Second, even though the patent laws are not explicitly invoked in the complaints, when the substance of the complaints is analyzed under the liberal pleadings standard of Haines v. Kerner, then we find that this court has section 1295(a) jurisdiction over the appeals from the district court cases under the well-pleaded complaint rule.

Examination of the complaints in the four "fraud" cases reveals that there are critical allegations that turn on construction of the patent laws, which Constant must prove in his support for relief:

(1) Each complaint asserts "fraud" and "falsehoods" of Hillman, a defendant in all four cases, consisted of the reports that he submitted as a special master on the validity of Constant's patents and his testimony about the contents of those reports. The recommendations of the special master discussed both factual and legal positions about the validity of the '635 and '491 patents. Those recommendations were adopted by the district court and formed the decisions that both patents were invalid. The judgement of invalidity was reviewed by this court in Constant I and was affirmed. Constant I, 7 USPQ2d at 1061-65. No court could find Hillman's statements to be false or to constitute elements of tortious acts without construing and applying the patent laws, particularly 35 USC 102(b)

The following is a list of the names of the persons who have been admitted to the membership of the Society since the last meeting. The names are arranged in alphabetical order of the surnames. The names of the persons who have been admitted to the membership of the Society since the last meeting are as follows: [The text is extremely faint and illegible, but appears to be a list of names.]

and 103, to the facts of the patent case. Constant's case could only be sustained if a court were to find that the applicable portions of the patent statute mean something different from the interpretation of the district court as affirmed by this court. Many allegations against the other defendants also depend inextricably on first finding that Hillman's recommendations to the court were "false" and thus require the same construction of the patent laws.

(2) In Constant v. Hoff, the sole "fraud" alleged against Dr. Hoff, an expert witness in the patent case, was his testimony that, in his opinion, the '491 patent was anticipated by Intel's exhibit 5. None of the statements attacked by Constant concerns the truth or falsehood of facts. The statements involve questions of claim construction, such as whether the word "computer" in the preamble of claims in the '491 patent is a limitation and, if



so, whether a claimed computer requires a program to be enabling. (This court has affirmed the district court's rulings against Constant on these issues. Constant I, 7 USPQ2d at 1062-63.).

Clearly, construction of the patent law is required to determine whether Constant has any cause of action against Dr. Hoff. The cases against all of the other defendants in Constant v. Hoff depend essentially on whether the same opinions of Dr. Hoff and Hillman are "false", which cases in turn require interpretation of the patent laws.

(3) The complaint in Constant v. Wilson asks the court to declare the judgement in the patent case to be void because the district court lacked jurisdiction. Constant contends that the federal courts lack jurisdiction to invalidate any patent in an infringement suit because 35 USC 282 is unconstitu-



tional and that the Patent Office has exclusive jurisdiction to decide the validity of patents. These theories were rejected by the district court in the patent case, and we affirmed in Constant I, 7 USPQ2d at 1058-59. This question clearly arises under the patent laws.

Thus, Constant is asserting rights that could not exist under one construction of the patent laws but might exist under an opposite construction. In each of these cases, "patent law is a necessary element of one of the well-pleaded claims". Christianson, 56 U.S.L.W. at 4627. Jurisdiction, therefore, exists for this court to decide the appeals of the four fraud cases even though the complaints do not explicitly invoke the patent laws.

This does not imply that this court should assume jurisdiction over every case involving charge of fraud in the procure-



ment of a judgement in a patent case. We have jurisdiction in these particular cases because these cases depend on allegations that, although cloaked in terms of fraud, actually turn only on legal issues that would be sustained by one construction of the patent laws and defeated by an opposite construction.

IV. The Merits

There are multiple reasons for affirming the decisions of the district court. The district court correctly ruled that the judge and the special master are both absolutely immune from liability. See Butz v. Economou, 438 US 478, 508-17 (1978); Pierson v. Ray, 386 US 547, 553-554 (1967). Judicial immunity extends not only to the judge, but also to all participants who perform an integral part in the judicial process. Butz, 438 US at 512. A special master is

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a judicial officer. In re Gilbert, 276 US 6, 9 (1928); FRCP 53. A special master is this entitled to absolute immunity for acts performed within the scope of his official duties. We have reviewed the actions of the special master and found that they were all properly within the limits of his appointment. Constant I, 7 USPQ2d at 1061. Constant's lawsuits present exactly the type of vexatious and frivolous suits against judges and judicial personnel that the doctrine of judicial immunity is designed to guard against. See Forrester v. White, 108 S. Ct. 538, 544 (1988). The cases cited by Constant to argue for qualified immunity or the inappropriateness of a dismissal under FRCP 12(b)(6) are inopposite and are generally harmful to his case.

We also note that had it been permissible to inquire into the merits

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of Constant's complaints against the judge and the special master, he would have lost on all issues. The rulings by Judge Wilson and the actions of the special master of which Constant complains were reviewed by this court and were found to be entirely proper. Constant I, 7 USPQ2d at 1060-61, 1065. Other than disagreeing with the special master's legal recommendations, Constant's charge of "fraud" is based on his view that Hillman was unqualified to serve as a special master and that Hillman knowingly misrepresented himself as qualified. This court has specifically affirmed the lower court's finding that Hillman was well qualified to serve as a special master for that litigation. Id at 1061. We have also reviewed and affirmed Judge Wilson's rulings concerning the special master which rulings Constant now improperly tries to label as "fraud". Id at 1060-61.

In his summary judgement orders, Chief Judge Real correctly determined that Constant's cases were an impermissible collateral attack on the previous judgements invalidating the '491 and '635 patents and were barred by the doctrine of *res judicata*. The proper course for a dissatisfied litigant to redress legal errors is through appeal. not collateral attack on the judgement in a separate lawsuit, MGA, Inc. v. General Motors, Corp., 827 F2d 729, 731-32, 3 USPQ2d 1762, 1763 (Fed. Cir. 1987), cert. denied, 108 S. Ct. 705 (1988). Even though a second suit "has an independent purpose and contemplates some other relief, it is a collateral attack if it must in some fashion overrule a previous judgement!" Miller v. Meinhard-Commercial Corp., 462 F2d 358, 360 (5th Cir. 1972).



Relitigation of claims and issues through collateral attack is barred by the principles of res judicata. MGA, 827 F2d at 731-32, 3 USPQ2d at 1763; Young Engineers, Inc. v. United States International Trade Commission, 721 F2d 1305, 1314-15, 219 USPQ 1142, 1150-51 (Fed. Cir. 1983). Res judicata is a broad term referring to both claim preclusion and issue preclusion (collateral estoppel). Id at 1314, 219 USPQ at 1150; Restatement (Second) of Judgements 13 (1982). Issue preclusion bars a litigant from relitigating issues that were actually litigated by him in a previous lawsuit if:

- (1) The issue is identical to one decided in the first action;
 - (2) the issue was actually litigated in the first action;
 - (3) resolution of the issue was essential to a final judgement in the first action;
 - and (4) plaintiff had a full and fair opportunity to litigate the issue in the first action.
- (Footnote omitted).

A.B. Dick Co. v. Burroughs Corp., 713 F2d 700,



702, 218 USPQ 965, 967 (Fed. Cir. 1983),
cert den 464 US 1042 (1984).

As discussed in Part III, supra, the "fraud" cases actually seek to reverse the invalidation of Constant's patents in the earlier patent case. Constant's complaints also explicitly seek to relitigate various issues of the district court in that case concerning the special master, discovery, whether the proceedings of the patent action violated Constant's right to due process, the constitutionality of 35 USC 282, the constitutionality of summary judgement, the applicability of 42 USC 1985(3) as a cause of action in the patent suit, and the certification of a class action on behalf of inventors. Relitigation of all of these issues is barred by the principles of res judicata.

The district court correctly determined that Constant failed to raise any

issue of extrinsic fraud as required set aside a prior judgement, Wood v. McEwen, 644 F2d 797, 801 (9th Cir. 1981), cert den 455 US 942 (1982), and that he failed to plead fraud with the particularity required by FRCP 9(b). Miscellaneous Service Workers v. Philco-Ford Corp., 661 F2d 776, 782 (9th Cir. 1981). The court properly dismissed the claims under 42 USC 1983 for lack of state action, Haldane v. Chagnon, 345 F2d 601, 604-05 (9th Cir. 1965), and the claims under section 1985(3) for lack of the requisite racial- or class-based animus. United Brotherhood of Carpenters v. Scott, 463 US 825, 839 (1983).

V. Sanctions

The district court imposed sanctions in the form of attorney fees because it found Constant's claims to be frivolous, unreasonable, and without merit, and found

that they had subjected the court and the defendants to needless annoyance, expense, and harassment. An award of attorney fees is justified where groundless lawsuits are pursued merely as a reprisal against prevailing litigants and officers of the court. Cook v. Peter Kiewit Sons Co., 775 F2d 1030, 1036-37 (9th Cir. 1985), cert den, 476 US 1183 (1986), and where litigation is pursued after it becomes clear that it is unreasonable to do so. Christiansburg Garment Co. v. Equal Employment Opportunity Commission, 434 US 412, 422 (1978). Under these standards, the imposition of Rule 11 sanctions was clearly justified. It is clear from the record that these lawsuits were intended to harass judicial officers and prevailing litigants in the patent suit.

Many of Constant's attempts to

punish the participants in the patent case are rather scurrilous. For example, the complaints allege that "(a)s a result of Hillman's wanton, willful, knowing and deliberate acts, Mr. Hillman has, on information and belief, received payments and other benefits from defendants (in the patent case)". Thus, Constant attempted to impart an air of impropriety to the fact that the corporate defendants have had to pay the fees for Hillman's services as a special master. In the usual course of events the plaintiff and defendants have split the fees for the special master. Because of the disparity of resources between the pro se plaintiff and the corporate defendants, the district court allowed Constant's motion to require that the defendants bear the entire burden. This is one of several instances in which, after accepting the benefits of special allowances and dispensations from the court because of his

pro se status, appellant has twisted the meaning of these generous acts into an appearance of impropriety and conspiracy.

Constant's arguments that the court should have taken relative wealth into account do not require reversal. This issue was not raised in the district court, and Constant has provided no evidence of inability to pay. The district court had discretion in determining the amount of sanctions, and we see no abuse of discretion in the amount set by that court. Stewart v.

American International Oil & Gas Co., 845 F2d 196, 202 (9th Cir. 1988).

Constant's appeals to this court were similarly frivolous, subjected the appellees to burdensome legal expenses, and caused unnecessary work for this court. It should have been clear from the opinion of the district court and from the imposition of sanctions that further prosecution of these lawsuits would be unreasonable and frivolous. This

court has the power to sanction such frivolous appeals under FRAP 38. Zuger v. United States, 834 F2d 1009, 1010 (Fed. Cir. 1987); Devices for Medicine, Inc. v. Boehl, 822 F2d 1062, 1069, 3 USPQ2d 1288, 1294 (Fed. Cir. 1987); Asberry v. United States Postal Service, 692 F2d 1378, 1382, 215 USPQ 921, (Fed. Cir. 1982). Accordingly, we impose a sanction of \$2,000 against appellant James Constant for bringing these frivolous appeals, and require him to pay the private appellees both reasonable attorney fees and costs incurred by them on this appeal.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-1195

JAMES CONSTANT,

Appellant,

v.

STEPHEN WILSON and ROBERT HILLMAN,

Appellees.

ORDER

A suggestion for rehearing in banc
having been filed in these cases,

UPON CONSIDERATION THEREOF, it is
ORDERED that the suggestion for rehearing
in banc is declined.

FOR THE COURT

Francis X. Gindhart
Clerk

10/11/88

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

1911

APPEAL FROM

THE DISTRICT COURT

OF THE SOUTHERN DISTRICT OF NEW YORK

IN RE

THE

ESTATE OF JAMES H. HARRIS, DECEASED

ADMINISTRATOR OF THE ESTATE

VS. THE UNITED STATES OF AMERICA

Defendant

Presented by

THE DISTRICT ATTORNEY

OF THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

88-1197

JAMES CONSTANT,

Plaintiff-Appellant,

v.

HITACHI AMERICA, LTD., TEXAS INSTRUMENTS, INC.,
ANALOG DEVICES, INC., NEC ELECTRONICS, INC.,
SPENSLEY HORN JUBAS & LUBITZ, SHEPPARD
MULLIN RICHTER & HAMPTON, HOPGOOD CALIMAFDE
KALIL & BLAUSTEIN, and ROBERT HILLMAN,

Defendants-Appellees.

88-1198

JAMES CONSTANT,

Plaintiff-Appellant,

v.

MARCIAN HOFF, ROBERT HILLMAN, INTEL, INC.,
TEXAS INSTRUMENTS, INC., BLAKELY SOKOLOFF
TAYLOR & ZAFMAN, BAKER SMITH & MILLS,

Defendants-Appellees.

CORRECTED ORDER

Before SMITH, Senior Circuit Judge, NIES and
NEWMAN, Circuit Judges.

PER CURIAM.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

1950-51

PHYSICS 101

LECTURE NOTES

These lecture notes are for the first semester of the undergraduate physics course. They cover the topics of mechanics, electricity, and magnetism. The notes are written in a clear and concise style, and are intended to be used as a supplement to the textbook.

LECTURE 1: MECHANICS

1.1

1.2

1.3

1.4

1.5

1.6

1.7

1.8

James Constant appealed to this court the decisions of the United States District Court for the Central District of California in Constant v. Hillman, CV-87-06592-R, Constant v. Wilson, CV-87-07315-R, Constant v. Hoff, CV-87-06766-R, and Constant v. Hitachi, CV-87-07046-R. Constant's appeals were considered together and, on August 25, 1988, we affirmed the district court's decisions, including its imposition of sanctions under FRCP 11. Because we determined that his appeals were frivolous, we imposed our own sanction of \$2,000 against Constant and required him to pay to the private appellees both reasonable attorney fees and costs incurred by them on the appeal. Subsequently, appellees Hitachi America, Ltd., Texas Instruments, Inc., Sheppard Mullin Richter & Hampton, Marcian Hoff, Intel, Inc., Blakely, Sokoloff, Taylor & Zafman, and Baker, Smith & Mills filed their applications

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for attorney fees, with supporting documents. Having reviewed and considered the appellee's attorney fees applications and supporting documents, it is

ORDERED:

(1) Constant shall pay, before August 10, 1989, to Hitachi America, Ltd., the sum of \$18,303.35 in attorney fees and costs.

(2) Constant shall pay, before August 10, 1989, to Intel, Inc., Marcian Hoff, and Blakely, Sokoloff, Taylor & Zafman the sum of \$12,707.50 in attorney fees and costs.

(3) Constant shall pay, before August 10, 1989, to Texas Instruments, Inc., Baker, Smith & Mills, and Sheppard Mullin Richter & Hampton the sum of \$25,626.08 in attorney fees and costs.

(4) The judgements here entered may be enforced by execution procedures in the Central District of California or in such

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other place as may be lawfully appropriate.

FOR THE COURT

Edward S. Smith
Senior Circuit Judge

July 20, 1989

Date

APPENDIX B



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 07046 R

JAMES CONSTANT,
Plaintiff,

v.

HITACHI AMERICA, LTD ET ALS,
Defendants.

Defendants Texas Instruments and Sheppard, Mullin, Richter & Hampton having moved this Court for an award of sanctions pursuant to Federal Rule of Civil Procedure 11, the Court having considered the pleadings and papers filed by all parties regarding said defendant's motion for summary judgement, the Court having considered defendant's memorandum of points and authorities and declaration in support of defendant's application for sanctions and plaintiff's opposition thereto, the matter having come on for noticed hearing before

the Court on January 11, 1988 and plaintiff and defendants having an opportunity to be heard, and the Court being fully advised on the premises,

NOW THEREFORE IT IS ORDERED that the within action was filed by plaintiff James Constant in violation of Federal Rule of Civil Procedure 11 and plaintiff James Constant shall within thirty days from the date of this order pay as sanctions to defendants Texas Instruments and Sheppard, Mullin, Richter & Hampton their reasonable attorneys fees and expenses in the defense of this action in the total amount of \$9,694.10. Payment shall be delivered to defendant's attorney Paul S. Malingagio.

DATED: January 25, 1988

Manuel L. Real

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 07046 R

JAMES CONSTANT,
Plaintiff,

v.

HITACHI AMERICA, LTD ET ALS,
Defendants.

The Court having read and considered the application for attorney fees submitted by defendants Analog Devices, Inc. ("Analog"), NEC Electronics Inc ("NEC") and Hopgood, Calimafde, Kalil, Blaustein & Judlowe ("Hopgood"), pursuant to Rule 11, Federal Rules of Civil Procedure, and having read and considered the opposition by plaintiff James Constant to the application, and this Court having held a hearing on January 11, 1988 concerning the application for attorney fees, in which plaintiff and these defendants

were permitted an opportunity to present oral arguments concerning the application, the application is granted and

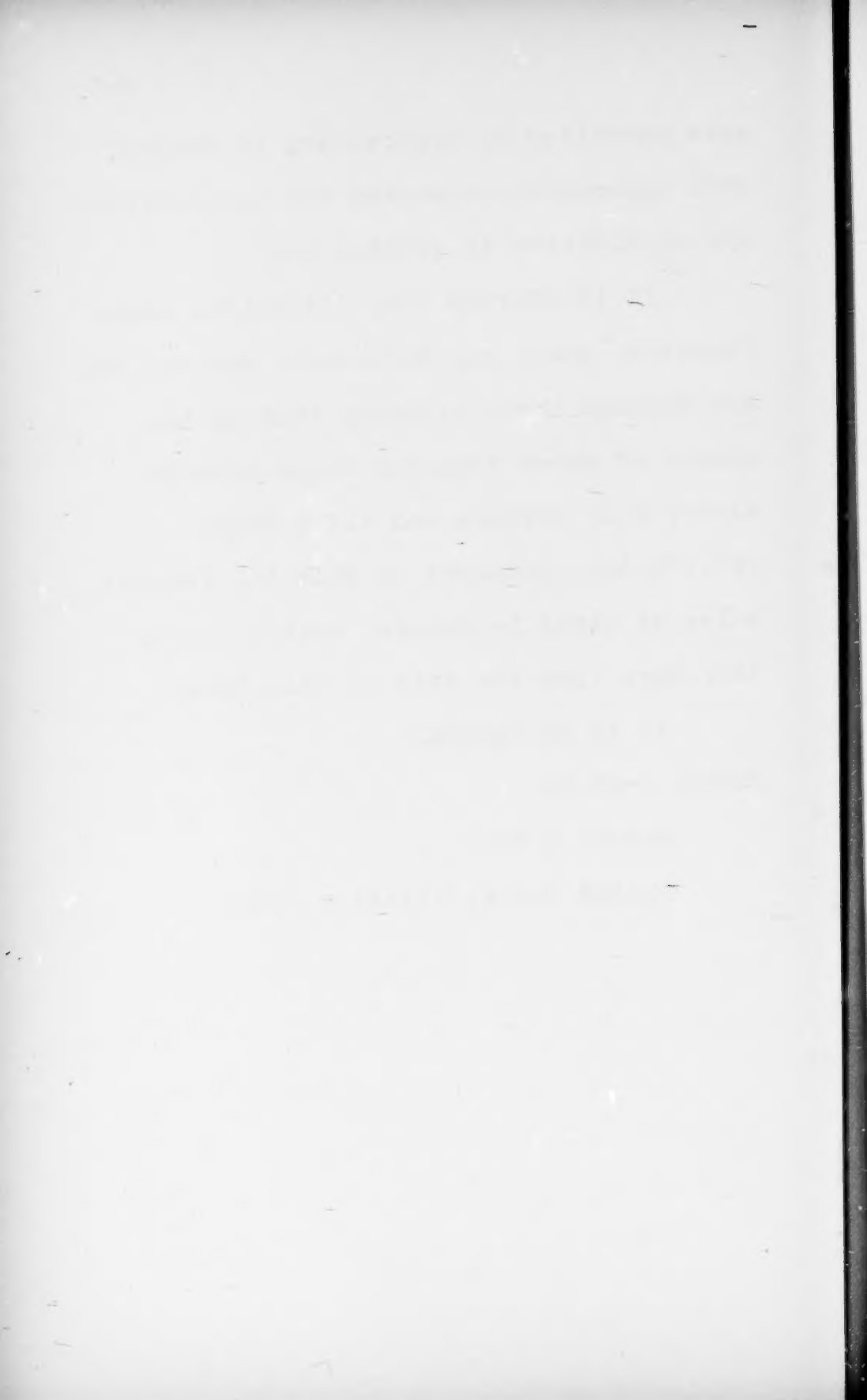
IT IS ORDERED THAT plaintiff, James Constant, shall pay defendants Analog, NEC and Hopgood their attorney fees in the amount of Seven Thousand Three Hundred Ninety Four Dollars and Fifty Cents (\$7,394.50), pursuant to Rule 11, Federal Rules of Civil Procedure, within thirty (30) days from the date of this Order.

IT IS SO ORDERED

DATED: 1-25-88

Manuel L Real

United States District Judge



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 07046 R

JAMES CONSTANT,
Plaintiff,

v.

HITACHI AMERICA, LTD ET ALS,
Defendants.

This Court, having heard the arguments of the parties has decided --notwithstanding the fact that the plaintiff was proceeding pro se-- that the complaint in this action: (i) was not grounded in fact; and (ii) was not warranted by existing law, or a good faith argument for the extension, modification or reversal of existing law. Further, this Court has reviewed defendant Hitachi America Ltd's request for attorney's fees in this case of \$7,298.75 and determined that those attorney's fees are reasonable under

under the circumstances. Therefore, as a sanction under Federal Rule of Civil Procedure 11, this Court hereby finds that the plaintiff James Constant should pay Hitachi America Ltd. its attorney's fees.

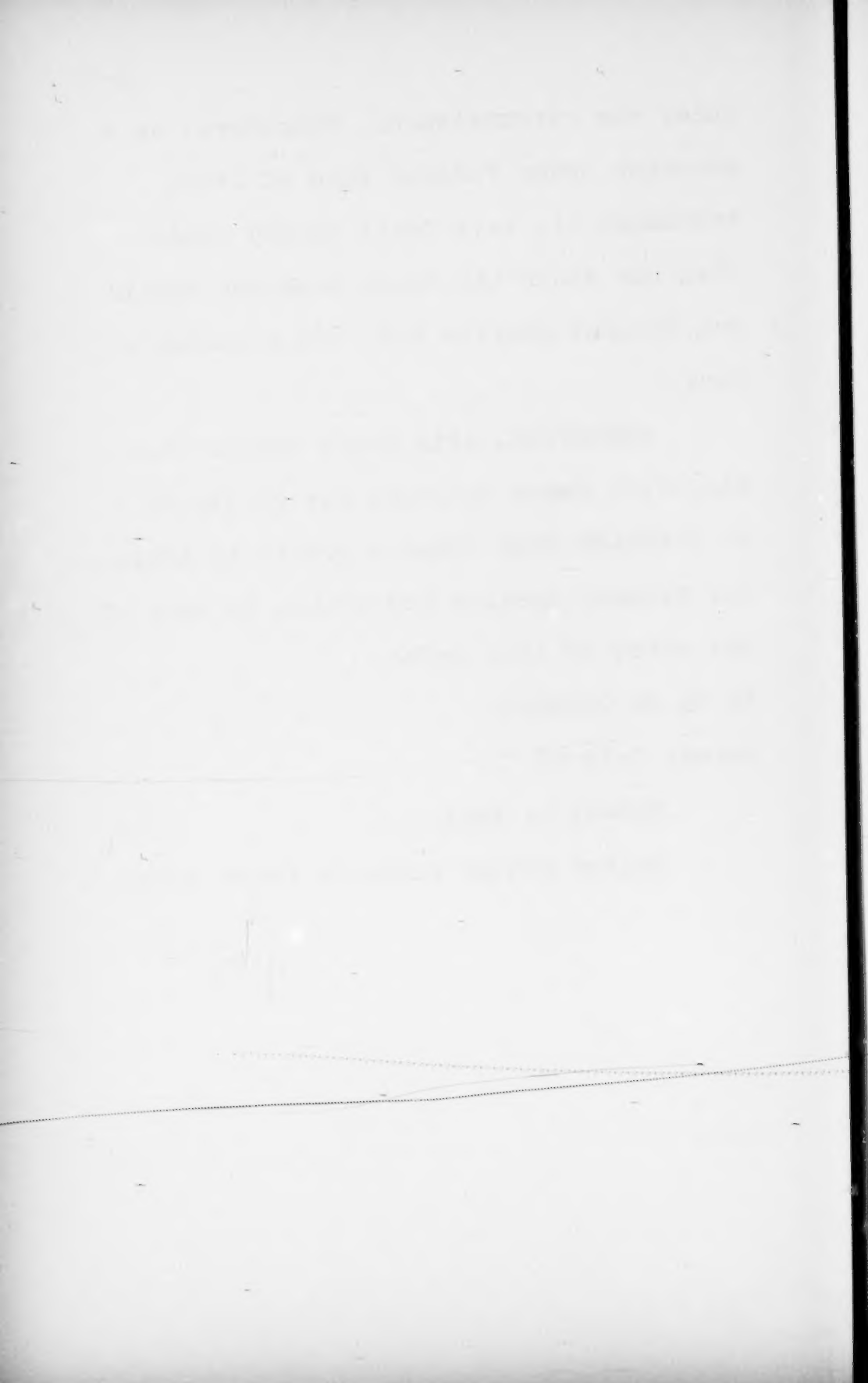
THEREFORE, this Court orders that plaintiff James Constant pay \$7,298.75 to SPENSLEY HORN JUBAS & LUBITZ in trust for Hitachi America Ltd within 10 days of the entry of this Order.

IT IS SO ORDERED

Dated: 2-16-88

Manuel L. Real

United States District Court Judge



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 06766 R

JAMES CONSTANT,
Plaintiff,

v.

MARCIAN HOFF, ET ALS,
DEFENDANTS

Defendants Texas Instruments and Baker, Smith & Mills having moved this Court for an award of sanctions pursuant to Federal Rule of Civil Procedure 11, the Court having considered the pleadings and papers filed by all parties regarding said defendant's motion for summary judgement, the court having considered defendant's memorandum of points and authorities and declaration in support of defendant's application for sanctions and plaintiff's opposition thereto, the matter having come on for noticed hearing before

THE CHURCH OF THE FUTURE
AND THE CHURCH OF THE PRESENT
BY J. H. W. L. S.

THE CHURCH OF THE FUTURE
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BY J. H. W. L. S.

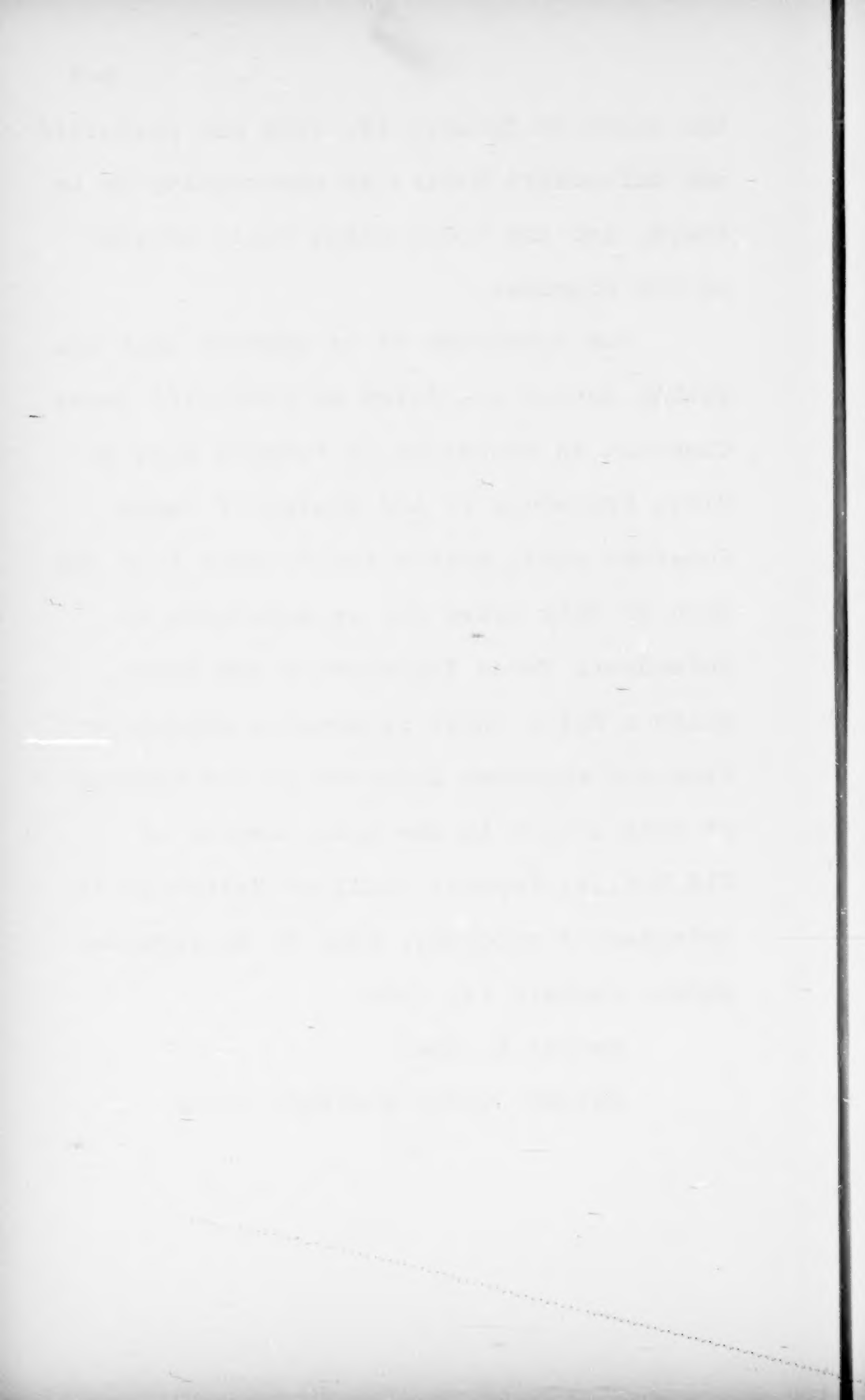
the Court on January 11, 1988 and plaintiff and defendants having an opportunity to be heard, and the Court being fully advised on the premises,

NOW THEREFORE IT IS ORDERED that the within action was filed by plaintiff James Constant in violation of Federal Rule of Civil Procedure 11 and plaintiff James Constant shall within thirty days from the date of this order pay as sanctions to defendants Texas Instruments and Baker, Smith & Mills their reasonable attorneys fees and expenses incurred in the defense of this action in the total amount of \$16,016.16. Payment shall be delivered to defendant's attorney, Paul S. Malingagio.

DATED: January 22, 1988

Manuel L. Real

UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CV 87 06766 R

JAMES CONSTANT,
Plaintiff,

v.

MARCIAN HOFF, ET ALS,
Defendants

WHEREAS, Defendants Marcian Hoff ("Hoff"), Intel Corporation ("Intel") and Blakely, Sokoloff, Taylor & Zafman ("BSTZ") have joined in the Motion for an Award of Sanctions against Plaintiff James Constant pursuant to Rule 11 of the Federal Rules of Civil Procedure ("FRCP"), which Motion was brought by Co-Defendants Texas Instruments and Baker, Smith & Mills;

WHEREAS, this Court has considered the briefing and evidence of the parties with respect to this Motion and all pleadings filed herein and has considered

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the arguments of the parties at the hearing for this Motion, which hearing was held on January 11, 1988;

WHEREAS, this Court has determined that the within action was filed by Plaintiff James Constant in violation of Rule 11 of the FRCP and that Plaintiff shall pay as sanctions to Defendants Hoff, Intel and BSTZ their reasonable attorney fees in the total amount of \$4,425 incurred in defense of this action;

THEREFORE,

IT IS HEREBY ORDERED THAT:

Plaintiff James Constant shall pay monetary sanctions of \$4,425 to Blakely, Sokoloff, Taylor & Zafman in trust for defendants Hoff, Intel and BSTZ. Plaintiff shall pay this amount within thirty (30) days of the entry of this order.

Date: 1-22-88

The Honorable Manuel L. Real
United States District Court Judge



CERTIFICATE OF SERVICE

I certify that the foregoing
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT and APPENDIX were
served on all parties by mailing first
class three (3) true copies to each of
them on 11 September, 1989 addressed
as follows:

STEPHEN PETERSEN
UNITED STATES ATTORNEY
312 S. SPRING STREET
LOS ANGELES, CA 90012

MARTIN R. NORM
SPENCLEY NORM JUBAS & LUBITZ
1880 CENTURY PARK EAST, 5TH FLOOR
LOS ANGELES, CA 90067
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EDWIN H. TAYLOR
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN
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JOHN W. CALINAFDE
HOPGOOD, CALINAFDE, ET AL
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JERRY R. SELINGER
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500 LTV CENTER, 2001 ROSS AVENUE
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PAUL J. MALINGAGIO
SHEPPARD, MULLIN, RICHTER & HAMPTON
333 SOUTH HOPE STREET, 48TH FLOOR
LOS ANGELES, CA 90071

REPORT OF THE

COMMISSIONER OF THE

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FOR THE YEAR 1887

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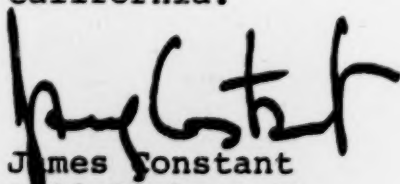
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Barbara Herwig/R. Rasmussen
Dept of Justice, Civil Division
Appellate Staff
10th & Penn Ave., NW Rm 3631
Washington, D.C. 20530

Solicitor General
Department of Justice
Washington, D.C. 20530

I declare under penalty of
perjury that the foregoing is true
and correct.

Executed on 11 September,
1989 at Claremont, California.


James Constant
1803 Danbury Dr
Claremont, CA 91711
(714) 624-1801

pro se petitioner